14

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 245.

THE BALTIMORE & OHIO RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

HARRY F. HOSTETTER.

ERROR TO THE CIRCUIT COURT OF MARION COUNTY, STATE OF WEST VIRGINIA.

FILED SEPTEMBER 12, 1914.

(24,365)

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ATE OF WEST VIRGINIA,
County of Marion, To wit:

remembered that heretofore, to-wit, on the 16th day of r, 1912, there was filed in the Office of the Clerk of the ourt, in and for the County of Marion and State of West a transcript of the proceedings, and papers in connection of an action of H. F. Hostetter against The B. & O. Railpany, a Corporation, had before D. S. Helmick, a Justice ace of said Marion County, which transcript and paper are ds and figures following, to-wit:—

HARRY F. HOSTETTER, Pl'ff.
v.
LTIMORE AND OHIO RAILROAD COMPANY, a Corporation, Deft.

ction Before D. S. Helmick, a Justice of Marion County, West Virginia.

intiff sues to recover of the Defendant $100.00.

ns issued on the 18th day of October, 1912, returnable h day of October, 1912, at 8 o'clock A. M. and placed in of John S. Walker, C. M. C. Summons returned, executed follows, to-wit: Served the within summons on the Baltiohio Railroad Company, a Corporation, in Marion County, the 19th day of October, 1912, by delivering a true copy the said Bailey Thompson, agent for the said Baltimore Railroad Company, a corporation, the said Bailey Thompng in said County.

Teste)
J. S. WALKER, *C. M. C.*
D. S. HELMICK, *Justice.*

912. October 26.—This cause continued one week for defendant.

ovember 2.—This cause came on to day *to day* present ff and the defendant by its attorney, J. P. Kirby, the oved for a continuance on the ground of the absence of y, Harry Shaw, which said continuance is granted for until November 9, 1912, at same hour.

D. S. HELMICK, *Justice.*

ovember 9.—This cause came on to day to be heard, both sent. The plaintiff and his counsel, Harry Shaw, and dant by their counsel, J. P. Kirby. The plaintiff was his evidence heard. The counsel for defense submitted wing that an order of attachment had been issued by a

legheny County, Virginia, and the court took time to

D. S. HELMICK, *Justice.*

ember 14. After consideration of the evidence *of the* it is the judgment of the Court that the plaintiff stetler, recover from the defendant, the Baltimore and d Company, a corporation the sum of Fifty Five and th interest thereon from November 11th, 1912, and for his action.

D. S. HELMICK, *Justice.*

ember 15.—The defendant this day by its attorney ed its bond in the penalty of $115.00 with J. P. Kirby I. M. Neely as sureties, and asked for an appeal from ove judgment to the Circuit Court of Marion County, aid bond being approved by me, the said appeal is a transcript of the docket will be made and trans- er with all the papers in said case.

D. S. HELMICK, *Justice.*

EST VIRGINIA,
Marion County, To wit:

Helmick, a Justice of said County, do certify that the o annexed is a complete transcript from my docket proceedings before me in the action wherein Harry F. plaintiff, and the Baltimore and Ohio Railroad Com- fendant, and I herewith transmit to the Clerk of the said County the appeal bond and all original papers in d I further certify that I hereto append a correct taxa- osts before me.

er my hand this the 15th day of November, 1912.

D. S. HELMICK, *Justice.*

Taxation of Costs.

e's costs:

	.20	
	.10	
	.20	
	.20	
	.05	
	.50	
	.25	
D.	.25	
Satis.	.10	
osts	.20	
		2.05
osts, Serv. Sum		.40
Cost to Justice, Bond	.25	
Transmitting	.75	
		1.00
		3.45

Bill of Particulars, filed with transcript from Justice ick, in Clerk's Office of Circuit Court, November 16th, he words and figures as follows, to-wit:

HARRY F. HOSTETLER
vs.
ORE & OHIO RAILROAD COMPANY, a Corporation.

Plaintiff's Claim, $100.00.

On Contract.

Justice Helmick.

or Saturday, Oct. 26, 1912, at 8 o'Clock A. M.

e and Ohio R. R. Co. to Harry F. Hostetter, Dr.

month of August, 1912..... $60.00
..... 40.00
ce.....$100.00

nother day, to-wit, on the 31st day of December, t a Regular Term of the Circuit Court of said Marion llowing order was entered.

H. F. HOSTETLER
vs.
B. & O. R. R. Co.

Appeal.

appearing to the Court this case is certified to the Court, therein to be tried, heard and determined ac-

day, to-wit, on the 21st day of January 1913, at a of the Intermediate Court of said Marion County, rder was entered.

H. F. HOSTETLER
vs.
B. & O. R. R. Co.

Appeal.

appearing to the Court this case is certified to the ourt, therein to be heard, tried and determined ac-

other day, to-wit, on the 28th day of May, 1913, the g order was entered:

H. F. HOSTETLER
vs.
B. & O. R. R. Co.

Appeal.

me the Plaintiff by Harry Shaw, his attorney, and Defendant by M. M. Neely and J. P. Kirby, its attor-

the defendant tendered and asked leave to file a writ- nfess judgment in favor of the plaintiff for the sum $1.00) which offer bears proff of service upon the nd which offer being seen and inspected by the Court filed.

for plea, the defendant, by its attorneys, says it does nner and form as the plaintiff herein hath alleged of this it puts itself upon the country and the plain- e and issue is thereon joined.

Jury, drawn and empanelled according to law, came F. Dragoo, Fred Fleming, Joe Parker, W. A. Fritz, man, George E. Holdren, Wm. O. Bailey, Sanford Wade, W. D. Swiger, W. A. Fletcher and W. L. Cross, re sworn according to law, and after having partly he evidence were adjourned until tomorrow morning o'clock.

fendant to confess Judgment, filed in open Court, by order of May 28, 1913, with proof of service thereon, and figures following, to-wit:

H. F. HOSTETTER, Plaintiff and Appellee,
vs.
OHIO RAILROAD COMPANY, a Corporation, Defendant and Appellant.

Appeal.

tter, plaintiff and appellee in the above action, will otice that the Baltimore and Ohio Railroad Company, and appellant now here, offers to confess judgment in H. F. Hostetter, said plaintiff and appellee in the for the sum of One Dollar ($1.00).

ay of May, 1913.

BALTIMORE AND OHIO RAILROAD COMPANY,
By M. M. NEELY,
Its Attorney and Attorney-in-Fact.

within notice on the within named H. F. Hostetter, unty, West Virginia, on May 28, 1913, by delivering copy thereof in writing.

M. M. NEELY.

OF WEST VIRGINIA,
Marion County, To wit:

rsonally appeared before me in said county and State, who being by me first duly sworn, on his oath says the f service is true and that said service was made at the e manner therein set out.

my hand this May 28, 1913.

J. P. KIRBY,
Notary Public.

sion expires Dec. 13th, 1919.

day, to-wit, on the 29th day of May, 1913 the follow- entered:

H. F. HOSTETTER
vs.
B. & O. R. R. Co.

Appeal.

me again the respective parties by their respective the Jury who are trying this case came into Court eir adjournment on yesterday, and after having fully ence and argument of counsel and received their in- the Court, were sent to their chamber to consider and after some time returned into Court and upon ay, "We, the Jury, find for the plaintiff in the sum of o dollars and forty seven cents ($62.47)."

upon, the defendant, by its attorneys, moved the set aside said verdict of the jury and grant it a new e herein, upon the grounds following:

urt erred in giving to the jury, at the request of the ver the objections of the defendant, plaintiff's in- 1 to 8 inclusive.

urt erred in refusing to permit the defendant to in- dence a part of the record of the proceedings of the rt of the City of Staunton, Virginia, the same being inion of the said Court.

dict exceeds the amount demanded in the plaintiff's lars.

dict of the Jury is contrary to the law and the evi-

on, of its judgment, the Court takes time to con-

o-wit, on the 18th day of June, 1913, the follow-
d:

H. F. HOSTETTER
vs.
B. & O. RAILROAD Co.

e plaintiff, and the defendant by their respective
nd thereupon the plaintiff moved the Court to
laintiff to enter a remitt-ur of a part of the ver-
ury returned in this case, that is to say, to remit
sum of $3.47, and to reduce the verdict of said
$59.00, and thereupon the plaintiff moved the
ent upon said verdict for the said sum of $59.00
nd of its judgment the court takes time to con-

to-wit, at a Special Term of the Intermediate
for the County of Marion, on the 15th day of
owing order was entered of record:

H. F. HOSTETTER
vs.
ORE & OHIO RAILROAD COMPANY.

Appeal.

e plaintiff and the defendant by their respective
Court having maturely considered of its judg-
on of the defendant to set aside the verdict of the
s case, and to grant the defendant a new trial
ving considered the motion of the plaintiff to
47 of said verdict, and the motion of the plain-
t upon said verdict for the amount thereof less
r for the sum of $59.00; and the Court having
ed all of said motion made by the defendant
iff respectively, is of opinion to and doth hereby
motion to set aside said verdict of the Jury and
nts a new trial of this case; to which action of
to set aside said verdict and grant the defend-
n, the said defendant excepted; and the Court
judgment upon said verdict, and upon the mo-
sking to enter a remitt-ur of the sum of $3.47
it is considered by the Court that the plaintiff
of said verdict, and it is further considered by
laintiff recover from the defendant and from
. Kirby, its surety upon the appeal bond in this
00, with interest thereon from the 29th day of
f said verdict, until paid, and the costs of this
expended, both in this court and before the

f the Court the defendant excepts.

expressing a desire to appeal to the Circuit Court
r a Writ of Error and a supersedeas to this order,
defendant, B. & O. Railroad Company, the exe-
dgment is suspended for 45 days from this date
g order not to be effective until the defendant, or
hall enter into bond before the Clerk of this Court,
80, conditioned according to law.

ner day, to-wit, on the 19th day of July, 1913, at a
on of the Intermediate Court of Marion County,
the following order was entered of record:

H. F. HOSTETTER
vs.
TIMORE AND OHIO RAILROAD COMPANY.

On Appeal.

the parties by their respective Attorneys and the
l his two several bill of exceptions, marked for
fendant's Bill of Exceptions No. 1," and "De-
Exceptions No. 2," respectively, and which said
and each of them, are, on the defendant's mo-
ed filed, and made a part of the record in this
as a part of said bill of exceptions No. 2 certifies
en for the defendant, marked for identification,
uctions," which is also hereby ordered filed and
record in this case.
t's Bill of Exceptions No. 1, filed in open Court
going order of July 19, 1913, is in the words and
wing, to-wit:

fendant's Bill of Exception No. 1.

H. F. HOSTETTER
vs.
B. & O. R. R. COMPANY.

On an Appeal.

l that upon the trial of the above entitled action,
sworn to try the issue therein joined, the follow-
bmitted to them, to-wit:
F. Hostetter, testified in substance as follows:
or to the 6th day of May, 1911, he resided at
ginia; that on or about the 12th of July,
be a resident of said State of Virginia and re-
ginia and, with his wife and family, has ever
t Fairmont, West Virginia; that about October,
king for the defendant, Baltimore & Ohio Rail-

road Company, as brakeman or flagman, that he worked for said company until some time in September, 1912; that said Company is indebted to him in the sum of $58.69 for labor and work as such flagman and brakeman, as follows:

1912.	For balance due for wages for month of June.....	$1.89
	For sixteen days' work in August.....	$43.20
	For one day in August on yard engine.....	3.20
16	For one day flagging, in August.....	2.80
	For 27 hours' extra time.....	7.29
	For car fare paid out and to be refunded.....	.30
	Total	$58.68

That all of said sum was due and payable September 12, 1912, and that he was entitled to interest thereon from said 12th day of September, 1912, until paid, and that no part of said claim had ever been paid, but that the same remained due and owing to him and unpaid, and that he was entitled to the said wages according to his contract of employment, and the rules then in force of the defendant company.

That he owed the defendant company, or the relief department of the defendant company, the sum of $3.00, which it was customary for employees to pay per month for insurance; that he received his September pay for work done for the defendant, but that his check for August pay was, for some reason unknown to him, held up; that upon many inquiries from the officials, and from the attorneys of the defendant, he finally learned that or was told by the trainmaster that a man by the name of F. L. Mayhen had attached his wages; that he did not know any one by that name and had never had any dealings or transactions with him, and had never been served with any notice or summons from any one by that
17 name; that failing to get any satisfaction or to receive said wages due him, he brought this action to recover what was due him.

The said plaintiff was then inquired of by the attorney for the defendant in reference to a certain proceeding against him and a garnishment against the defendant company, mentioned in the purported record filed by the defendant in its defense of this action in said Intermediate Court, and with respect thereto and in response to the questions by the attorney for the defendant, testified in substance as follows:

That he knew A. L. Wagner; that he owed him about $35.00, and had paid him $5.00 and owed him a balance of $30.00; that said Wagner had sued him before a justice by the name of Frank Harris in Virginia, while he lived at Clifton Forge; that the summons was served on his wife three days after the same was returnable; that an order of attachment was issued by said justice in said proceedings against his wages; that when he got his said summons, so served upon his wife, he took his attorney, and went before said Justice, and his attorney stated and showed the facts to the said

justice that the summons was served three days after it was returnable, and that thereupon, the said Justice released his said wages, and decided the case in his favor; that the said summons was served upon his said wife by Constable George Kimberly; that the foregoing suit against him by said A. L. Wagner, is all the suit or summons he ever had any notice of whatever that the said Wagner had brought against him, and that he had never received any
18 othe- *other* summons, or notice of any other suit brought by said Wagner at all; and he had never heard anything further from said suit before said Justice Harris.

And the said plaintiff being further inquired of by defendant's attorney, in answer thereto further said in substance: that he knew H. R. Swisher, the constable mentioned in the record filed by the defendant, but that the said Swisher never served any summons upon him; that he never knew there was any suit against him before said L. C. Duncan the Justice mentioned in said record; that he never was served with any summons in such suit, and never had any knowledge of any suit being brought there, or that any judgment was ever rendered against him by said Justice Duncan; also that he never was served with any order or notice of the purported attachment or garnishment proceeding mentioned in said record wherein it is attempted to be shown that the defendant railroad company was by judgment or order of one H. H. Harlow a justice of the peace of Virginia, required to pay to said A. L. Wagner, the sum of $38.40 with interest and costs, as therein stated; that he had no notice whatever of any such proceeding, until on the day this his action was heard before Justice D. S. Helmick, when J. P. Kirby, attorney then representing the defendant railroad company, offered in evidence the (or what purported to be) original papers issued and on file in said proceeding before said Justice Harlow; that on said trial day before said Justice Helmick, was the first knowledge
19 plaintiff had of the purported suit of A. L. Wagner, mentioned in the record filed by the defendant in said trial on appeal to said Intermediate Court.

Defense.

The defendant Railroad Company offered in evidence the following paper writing, purporting to be a record from the Corporation Court of Staunton, Virginia, which was objected to by the plaintiff, to-wit:

VIRGINIA:

Pleas Before the Hon. Richard S. Kerr, Judge of the Corporation Court of the City of Staunton, at the Court House Thereof, on February 27th, 1913.

Be it remembered: that heretofore, to-wit: on May 1st, 1911, a summons was issued by L. C. Duncan, a justice of the Peace of

Alleghany County, Virginia, which summons is in the words and gures following, to-wit:

IRGINIA,
Alleghany County, To wit:

o H. R. Swisher, Constable of said County:

I command you to summon H. F. Hostetter, if he be found in our District, to appear at my office at Selma, on the 6th day of lay, 1911, at 10 o'clock A. M. before me or some other Justice of aid County, to answer the complaint of A. L. Wagner upon a plea f debt for the sum of $35.00, due by note, and have then there his warrant.

Given under my hand this 1st day of May, 1911.

L. C. DUNCAN, *J. P.*

0 On the foregoing summons is the following return:

H. F. Hostetter could not be found at his usual place of bode on the said 1st day of May, 1911, so the within summons was xecuted on the said 1st day of May, 1911, within the Clifton Dis- rict of Alleghany Co., Va., by delivering a true copy of the within rriting and giving information of its purport to Mrs. H. F. Hos- tter who was found at H. F. Hostetter's usual place of abode, and ho is a member of his family and above the age of sixteen years.

H. R. SWISHER, *C. A. C.*

Judgment is granted the plaintiff against the Defendant for the m of $35.00, with interest from the 6th day of May, 1911, until aid, and $1.50 for costs this 6th day of May, 1911.

L. C. DUNCAN, *J. P.*

Upon this judgment a writ of fieri facias was issued as follows:

LLEGHANY COUNTY, VIRGINIA, *To wit:*

o H. R. Swisher, Constable of said County:

I command you in the name of the Commonwealth of Virginia, at of the goods and chattels of H. F. Host/tetter in your District, ou cause to be made the sum of $35.00, with interest thereon from he 6 day of May, 1911, till paid, which A. L. Wagner recovered efore me in a warrant in debt, and also the sum of 1.50 dollars, hich were adjudged to the said L. C. Duncan for his costs in prose- uting the said warrant, and make return of this writ within sixty days.

1 Given under my hand this 26th day of June, 1911.

L. C. DUNCAN, *J. P.*

And at another day, to-wit: on the 17th day of September, 1912, garnishee summons was issued by H. H. Harlow, a J. P. for the ity of Staunton, Virginia, in the words and figures following:

THE COMMONWEALTH OF VIRGINIA:

To a Constable of the City of Staunton, Greeting:

Whereas, A. L. Wagner, did, on the 7th day of August, 1912, sue out — Geo. T. Byrd, J. P. for the City of Clifton Forge, Va., a writ of fieri facias against the goods and chattels of H. F. Hostetter for the sum of Thirty-eight & 40/100 dollars, with interest thereon to be computed after the rate of six per cent per annum from the 6th day of May, 1911, till paid, and two 60/100 dollars costs, and commissions $1.90, and hath suggested that by reason of the lien of his writ of fieri facias there is a liability on persons other than the judgment debtor, and that Baltimore & Ohio Railroad Company— a corporation—is indebted to the said H. F. Hostetter or his money, bank notes, securities, evidences of debt, or other personal estate in its possession or under its control, belonging to the said H. F. Hostetter.

You are therefore commanded to summon the said Baltimore & Ohio Railroad Company to appear before H. H. Harlow, J. P., for the City of Staunton, Va., at No. 4 Main Street on the 30th day of September, 1912, at 10 o'clock A. M. to answer the said suggestion. And have then there this writ. Witness, H. H. Harlow, J. P., the 17th day of September, 1912, and in the 37th year of the Commonwealth.

H. H. HARLOW, *J. P.*

Subject to a credit of $5.00.

The above summons is endorsed as follows:

Executed as to B. and O. R. R. Company by delivering to P. M. Woodward, agt., of said Company in person, in the City of Staunton, Va., where the office of the said B. & O. R. R. Company is located and where the said B. and O. R. R. resides, a true copy of the within suggestion, on the 19th day of September, 1912, not finding the President or any Director of the General Supt. of the said Company.

C. A. CRAFTON, *C. C. S.*

Not executed as to H. F. Hostetter not finding him in my bailiwick (being informed that he is a non-resident of Virginia) Sept. 19, 1912.

C. A. CRAFTON, *C. C. S.*

And at another day, to-wit: On October 3rd, 1912, H. H. Harlow, J. P., rendered the following Judgment:

RGINIA,
City of Staunton, To wit:

A. L. WAGNER, Pl't'ff,
vs.
H. F. HOSTETTER and B. AND O. R. R. Co., Def't-.

Action on Judgment Before a Justice of the Peace.

The undersigned Justice of the Peace for the said City hereby certify that I did on the 30th day of September, 1912, render judgment on the above styled warrant in favor of plaintiff against the defendant-. for the sum of $38.40, with legal rest thereon at the rate of six per cent per annum, from the 6th of ——, 1911, till paid, and the cost of the Judgment, $2.60, missions, $1.90, and costs of garnishment, $1.50.
ubject to the following credits, viz: $5.00.
iven under my hand this 3rd day of October, 1912.

H. H. HARLOW, *J. P.*

nd now at this day, to-wit: In the Corporation Court of the of Staunton, held at the Court-House thereof, on February 27, .

A. L. WAGNER, Plaintiff,
vs.
AND O. R. R. COMPANY and H. F. HOSTETTER, Defendants.

he plaintiff in this proceeding brought suit against H. F. Hos- *in* May 1, 1911, before C. C. Duncan a J. P. for Alleghany ty, Va., and the case having been heard by said Justice jusg- was awarded the plaintiff for $35.00, with interest and costs st said Hostetter. And on October 3, 1912, a garnishee pro- ng was instituted by the plaintiff against H. F. Hostetter, sug- g that the B. and O. R. R. Company was indebted to said tter, and the case heard by H. H. Harlow a J. P. for the City of Staunton, who gave judgment against the B. & O. R. R. Co., *on* its answer acknowledging an indebtedness to said Hostetter in the sum of forty-eight 55/100 dollars, and ing the payment of plaintiff's claim of $38.40, with interest, and commissions by the said B. and O. R. R. Co., from this ent the B. and O. R. R. Company was granted an appeal to ourt, and the case having been fully heard, the Court is of n for reasons given in writing and made a part of the record, he judgment of the Justice should be affirmed. It is therefore d that the Plff. do recover against the B. and O. R. R. Com- as garnishee debtor of H. F. Hostetter, the sum of thirty- 40/100 dollars, subject to credit of $5.00, with interest thereon May 6th, 1911, until paid, and $2.60 costs of judgment before $1.90 commissions; $1.50 costs of garnishee before J. P. and ts of this appeal, $3.99.

(At the hearing of this case the following affidavit was filed:)

TATE OF VIRGINIA,
City of Staunton, To wit:

This day John Leslie Curry personally appeared before the Corration Court of the City of Staunton, and made oath that H. F. stetter, garnishee debtor in the case of A. L. Wagner against the and O. R. R. Co., and said H. F. Hostetter in a garnishee proding is a non-resident of the State of Virginia.
Given under my hand this 28th day of February, 1913.

NEWTON ARGENBRIGHT, *Clerk.*

The opinion of the Court, referred to in the above order is as follows, to-wit:

WAGNER, A. L.,
vs.
B. & O. R. R. Co.

On Garnishment.

pon an examination of the record in this case it appears that . Wagner recovered against H. F. Hostetter, before a Justice of peace of Alleghany Co., a judgment and that execution was duly properly issued upon said judgment. It appears that the service e warrant upon which said judgment was rendered was by de- y of a copy thereof, to a member of the defendant's family over ge of sixteen, and was in all respects in accordance with the te. The Court is of opinion that the judgment then rendered all respects valid and binding upon the defendant, H. F. Hos- . The plaintiff subsequently sued out a writ of fi. fa. and, as lary thereto, there was issued a garnishee process, suggesting the Baltimore & Ohio R. R. Company was indebted to the de- nt. Hostetter which said garnishment was duly executed upon garnishee debtor, but as to said Hostetter was not executed. An vit of the non-residence of said Hostetter was filed, and the sole on for the determination of this Court is whether the provision . 3609 of the Code, dispensing with any process, by publica- tion or otherwise, as to non-resident Judgment debtors, upon garnishment proceedings, is constitutional or whether such provision affords "due process" of law. Garnishment is not ginal proceeding, and neither affects nor determines any rights ween the plaintiff and the original defendant. These were and finally adjudicated when judgment was rendered upon proceedings by a Court of competent jurisdiction and with and legal service of process. Garnishment is merely ancillary main action, and is a writ in aid of execution. The Court is ion that no process is required in any case on garnishment dings in the judgment debtor unless the statute expressly re- it. As in the case at the bar the statute not only does not

it but expressly directs that it shall not issue, in the opinion
Court no process against the judgment debtor was necessary.
se reasons, it being admitted by the garnishee debtor that it
sum of $48.55 in its hands belonging to the judgment debtor
y in full the plaintiff's judgment, judgment is awarded in
the plaintiff.
py.
:

NEWTON ARGENBRIGHT, *Clerk.*

F VIRGINIA,
City of Staunton, ss:

I, Newton Argenbright, Clerk of the Corporation Court of
he City of Staunton, in the State of Virginia, certify that
aid Court is a Court of Common Law and Probate and Chan-
isdiction, having a clerk and seal, that the foregoing instru-
writing is a copy of the record in the case of A. L. Wagner
. Hostetter and the Baltimore and Ohio Railroad upon gar-
proceedings heard and determined by the Corporation Court
ity of Staunton.
stimony whereof, I hereunto set my hand and affix the im-
the seal of the said Court in office at Staunton, Virginia, this
y of February, A. D. 1913.
AL.] NEWTON ARGENBRIGHT, *Clerk.*

A,
City of Staunton, To-wit:

hard S. Ker, Judge of the Corporation Court of the City of
n, in the State of Virginia, the same being a court of record
Common Law and Probate Jurisdiction with a Clerk and
certify that Newton Argenbright, who hath given the pre-
certificate is Clerk of said Court, that his signature thereto
ne, and that his said attestation is in due form.
under my hand this 28th day of February, 1913.

RICHARD S. KER,
Corporation Court of the City of Staunton.

F VIRGINIA,
City of Staunton, ss:

I, Newton Argenbright, Clerk of the Corporation Court of
he City of Staunton, do certify that the Hon. Richard S. Ker,
ame appears subscribed to the foregoing certificate is the pre-
orporation Court Judge of said City of Staunton, duly com-
d and qualified and that his signature thereto is genuine.
under my hand and seal of said Court at Staunton, Vir-
is 28th day of February, 1913.
AL.] NEWTON ARGENBRIGHT, *Clerk.*

the foregoing record was submitted to the Jury as evidence,
g that the court refused to permit the defendant to intro-

evidence to the jury that portion of page six of said record, s as follows: "For these reasons, it being admitted by the e debtor that it has the sum of $48.55 in its hands belong- he judgment debtor to satisfy in full the plaintiff's judg- The plaintiff duly objected to the introduction of any part record in evidence, and the defendant duly objected to the f the court to permit all of said record to be submitted to . To the action of the court in permitting any of said record the jury the plaintiff excepted, and to the Court's ruling in all of said record to go to the jury the defendant excepted. the objections and exceptions of the plaintiff, the defendant nitted to submit as evidence to the jury the following notice ith the return of service thereon (it being agreed by the arties herein, with the court's consent, that the original of aid paper may be used in lieu of an attested copy thereof).

. Hostetter:

re hereby notified by the undersigned, The Baltimore and ilroad Company, a corporation, that on the 30th day of er, 1912, a jusgment was rendered against you as principal, railroad company as garnishee, in favor of A. L. Wagner y eight and 40/100 Dollars ($38.40) and costs, by H. H. a Justice of the peace for the City of Staunton, State of , in a certain action then and there pending before him, in id Wagner was plaintiff and you and said railroad company ndants, that subsequently, said railroad company took an rom said judgment to the corporation court of Staunton, , in which said Court said action is now pending on said hat said action is set for trial on said appeal at the present said corporation court, said court being in session at the ime.

ou are further notified that said Railroad company is ready ious to pay you any sum, which you are justly entitled to rom it, in the event of its being relieved from all liability tion pending as aforesaid.

w of the premises, you are hereby notified and requested to Staunton, Virginia, immediately, to assist in defending said ending as aforesaid; and you are further notified that if you ill protect and secure said railroad company, by bond or herwise, against liability or loss, by reason of the pendency said action in the corporation court aforesaid, that said Company will immediately thereafter pay you all that you entitled to receive from it.

at Fairmont, West Virginia, this 12th day of February,

THE BALTIMORE AND OHIO
RAILROAD COMPANY,
By M. M. NEELY, *Its Counsel.*

of service of the foregoing notice is in the following words es, to-wit:

ne within notice on the within named H. F. Hostetter, County, West Virginia, on the 14th day of February, elivering a true copy thereof in writing, to the said H. F. n person.

J. S. WALKER,
Constable of Marion County, W. Va.

p'd by Neely & Lively.

endant further submitted as evidence to the jury the aper, (it being agreed by the parties herein, with the sent, that the original of said paper may be used in lieu ted copy thereof,) purporting to be a voucher by which nt company paid to the clerk of the Corporation Court of Staunton, Virginia, $47.55 in full of the judgment agner against the plaintiff, as garnishee of said Hostetter. iff, by his counsel, in open Court, waived proof of the enticity of said voucher, that is, waived the proving of Check by the proper official of the defendant Company made it, and the plaintiff, by his counsel, did object except to the introduction of said check on the same at he objected to the introduction of the foregoing rec- on the ground that the same was no legal evidence plaintiff; the defendant furthe- proved that it had made writing to confess judgment herein in favor of the plain- sum of One Dollar, it being claimed by said defendant im is all that it owes the said plaintiff herein.

egoing contains all the material facts submitted to said er the defendant had submitted said record to the jury, oved the court to strike out so much of the plaintiff's s tended to contradict the facts shown by said record as of process on said defendant in the state of Virginia in nd garnishment proceeding of said Wagner against said Which motion was overruled by the court, and to the he court in overruling said motion the defendant, by its cepted.

d voucher above referred to is in the words and figures to-wit:

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To J. V
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The Baltimore & Ohio Railroad Company.

Accounting Dept. No. —.

Audit No. 81945.

MONTH, March, 1913.

For amount in settlement of attachment case of A. L. Wagner versus H. F. Hostetter as per judgment of court rendered February term, 1913.. $47.50

BALTIMORE, MD., Mar. 31, 1913.

Pay to the order of Newton Argenbright, Clerk of Corporation Court of City of Staunton $47.50

c/o Auditor of Disbursements, Baltimore, Md.

Forty-seven and 55/100 Dollars.

In settlement of above account payable at National Bank of Baltimore, Baltimore, Md.

d
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d
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d
— —.

d for payment.
J. T. LEARY,
General Auditor.

McNeal, Treasurer, the Baltimore & Ohio Railroad Com-
more, Md.

—— ——,
Auditor of Disbursements.

George A. Vincent, Judge of the Intermediate Court
arion County, West Virginia, in which said court the
case of H. F. Hostetter v. B. & O. R. R. Company was
rtify that the foregoing is a correct transcript of all of
evidence adduced on said trial, and that said transcript
of the material evidence submitted to and heard by
the trial of said case.

GEORGE A. VINCENT,
Judge of the Intermediate Court of
Marion County, West Virginia.

of said evidence had been adduced on the trial of this
same had been heard by the Jury, and after the jury
he instructions of the Court and the argument of coun-
n the 29th day of May, 1913, it rendered a verdict in
plaintiff against the defendant, for the sum of $62.47;
he defendant moved the court to set aside the said ver-

5

it a new trial of this case, for the following reasons,

irt erred in giving to the jury, at the request of the ver the objection of the defendant, plaintiff's instruc- 8 inclusive. (see Defendant's Bill of Exception No.

urt erred in refusing to permit the defendant to in- dence a part of the record of the proceedings of the urt of the City of Staunton, Virginia, the same being inion of the said Court.

The verdict exceeds the amount demanded in the 's bill of particulars.

The verdict of the Jury is contrary to the law and

on the Court took time to consider, and afterward, 15th day of July, 1913, the said Intermediate Court, m thereof, overruled the said motion to set aside said ant the defendant a new trial of the issues herein, , on motion of the plaintiff, and over the objections nt, the court permitted the plaintiff to enter a re- l verdict amounting to $3.47, and upon plaintiff's , and over the objections of the defendant, the Court ent on said verdict, against said defendant, and M. M. P. Kirby, its bondsmen, after deducting the amount ur. for the sum of $59.00, with interest thereon from f May, 1913, until paid.

notion of the court in overruling said motion to set dict and grant the defendant a new trial, and in per- fendant to enter said remitt-ur, and in entering judg- rdict against the defendant, and said bondsmen, for of $59.00, with interest thereon from said 29th day , the defendant, by its counsel, then and there ex- noved the court to certify the evidence and save its s to it, and make the same matters of record herein, dant tendered a transcript of said evidence which is nd signed, and the defendant took this, its Bill of . 1 and prayed that the same be signed, sealed and part of the record herein, all of which is accord- done, and the foregoing, for identification, is marked dant's Bill of Exceptions No. 1."

Special Term of said Court, this 19th day of July, hin thirty days from the adjournment of said term ich said action was heard.

GEORGE A. VINCENT, [SEAL.]
Judge of the Intermediate Court of Marion County, West Virginia.

Be it reme
before the ju
duced by both
the Court to
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in this case."

Defendant's Bill of Exceptions No. 2.

H. F. HOSTETTER
vs.
B. & O. R. R. COMPANY.

Upon an Appeal.

bered that upon the trial of the above entitled action
, and after the jury had heard all the evidence ad-
the parties herein, the plaintiff, by its counsel, moved
ive to the jury the eight instructions following, to-

No. 1.

inst*u*rcts the jury that if they believe from the evi-
ase that the plaintiff Hostetter was not served with
ne original case before the justice mentioned in the
nce, then he is not bound thereby and any judgment
e Justice without service of summons upon the plain-
re the trial day, is void and of no effect and if the
nt was void for want of service of a summons upon
r, the fact that a garnishment was issued thereon
l on the B. & O. Railroad Company, could not make
valid, and the garnishment was also void."

No. 2.

nstructs the jury that if they believe from the evi-
judgment in evidence was rendered by the Virginia
ed in the evidence of the defendant, without service
egal summons upon the plaintiff Hostetter, then the
rendered by said Virginia Court is void and of no
not bind the said Hostetter."

No. 3.

jury believe from the evidence that the Defendant
the plaintiff for work and has not paid the same to
one authorized by him to collect the same, or upon
nt wherein he was served with a summons, then the
for the plaintiff whatever sum is due him for his

No. 4.

nstructs the jury that the record read in evidence
d to be introduced in evidence for what it is worth
face and the jury may give to it such weight as they
ntitled to under all the evidence and circumstances

No. 5.

nstructs the Jury that the burden of proving pay-
's claim is upon the defendant."

No. 6.

nstructs the Jury that according to the undisputed
case, the plaintiff Hostetter was a resident of this
e of the alleged suit and judgments mentioned in
nst the defendant B. & O. R. R. and that said Vir-
ld not get jurisdiction of the plaintiff unless it
with summons in said state of Virginia."

No. 7.

nstructs the Jury that they shall disregard the no-
the plaintiff by the defendant purporting to notify
al in said Virginia Court."

No. 8.

nstructs the Jury that they must disregard the $1.89
vidence as due the plaintiff from the month of June,
so described in the bill of particulars; but they are
that they need not allow nor deduct from plaintiff's
of $3.00 which the plaintiff may owe the defendant
relief department for said month of August, because
does not file or claim any set off. And whatever sum
ue the plaintiff, if any, they shall allow him interest
e time it was payable to this date."

g of which said instructions, and each of them, the
nt, by its counsel objected, but the court overruled
tions of said defendant to the giving of said instruc-
d each of them, and over the protest of said de-
and all of said eight instructions were given to the
urt, to which action of the court in overruling said
giving said instructions, and each of them, to the
dant, by its counsel, then and there excepted, and
exceptions, is signed, sealed and saved to it, and
part of the record in this case, and which, form
is marked "Defendant's Bill of Exceptions No. 2."
membered that upon said trial before said jury, the
l the court to instruct the jury as follows, to each five
uctions the plaintiff objected, but the court gave the
ry and the plaintiff excepted to the giving of each.

Defendant's Instructions No. 1.

nstructs the Jury that a case against a corporation is
ly the same rules of law as those by which a case is
individual, and that a corporation is entitled to pre-

cisely the same r
a natural person

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ts and benefits as a litigant in court, as if it were

No. 2.

cts the Jury that the plaintiff, Hostetter, has the roving to the jury by a preponderance of the evi- he Baltimore & Ohio Railroad Company is really him, and the amount of such indebtedness, and satisfied from all the evidence that the plaintiff s case, and has so shown that the Railroad Com- ething, you should find for the defendant.

No. 3.

cts the Jury that if you believe from all the evi- intiff, H. F. Hostetter was duly summoned to ut of A. L. Wagner in the suit of Wagner against ore L. C. Duncan, a Justice of the Peace of Alle- ginia, and that a judgment in said suit was sub- n favor of said Wagner against said Hostetter for s the record in evidence purports to show, and the B. & O. Railroad Company was duly sum- ce in said suit and was compelled to pay in satis- cluding principal, interest and costs the $47.55 any's check or voucher offered in evidence, then, t is the duty of the jury to credit said $47.55 on intiff sued on here, just as if the said $47.55 had ter himself by the said Railroad Company.

No. 4.

r instructs the Jury that if they believe from all case that the Railroad Company was duly com- $47.55 in satisfaction of the debt of H. F. Hos- ner, and further find from the evidence that the ailroad Company owed said Hostetter only $1.00 he $47.55, so paid, then, and in that event, if find for the plaintiff your verdict should not be han the $1.00 mentioned.

No. 5.

ucts the Jury that the records and judicial pro- rt of the United States, or of any State, attested f, with the seal of the Court annexed and certified have such faith and credit given to them, in his State, as they have in the Courts of the State came. (Code Ch. 130, Sec. 19.)

duly excepted to the giving of each of said in- same are here certified and saved to the plain- five instructions is hereby made part of the rec-

ord in this case, and for identification the same are marked "Defendant's Instructions".

Done at a Special Term of said Court, this 19th day of July, 1913, and within thirty days from the adjournment of said term of court, at which this action was tried.

GEORGE A. VINCENT, [SEAL.]
Judge of the Intermediate Court of Marion County, West Virginia.

It is hereby agreed between the plaintiff and defendant in this action, by their respective attorneys, that the foregoing is, in substance, all the evidence submitted to the jury on the trial of this case.

HARRY SHAW,
Attorney for the Plaintiff.

M. M. NEELY,
Attorney for the Defendant.

41 STATE OF WEST VIRGINIA,
County of Marion, ss:

I, W. S. Black, Clerk of the Intermediate Court in and for the County and State aforesaid, hereby certify that the foregoing is a true and correct transcript of the record, as taken from the record and papers on file in my office, in the case of Harry F. Hostetter against the Baltimore & Ohio Railroad Company, heard, tried and determined in said Intermediate Court.

Given under my hand this 24th day of July, 1913.

W. S. BLACK,
Clerk of Intermediate Court of Marion County, W. Va.

42 At another day, to-wit, at a Special Term of the Circuit Court, held in and for the County of Marion, at the Court House thereof, on the 3rd day of September, 1913, the following order was entered:—

H. F. HOSTETTER, Plaintiff,
v.
THE BALTIMORE AND OHIO RAILROAD COMPANY, a Corporation, Defendant.

Upon an Appeal from the Judgment of a Justice.

This day came the defendant, by M. M. Neely, its counsel, and presented to the court its petition for a writ of error and supersedeas from the judgment of the Intermediate Court of Marion County, rendered in the above styled suit on the 15th day of July, 1913, together with a transcript of the record of the proceedings had in said Intermediate Court; and upon the motion of said defendant said petition and transcript are hereby ordered filed.

The Court having maturely considered the matters contained in said petition and transcript is of opinion to, and doth hereby grant the praye- of said petition, and a writ of error and supersedeas is

hereby awarded said defendant, as prayed for; this order to take effect upon the defendant, or some one for it, executing bond before the Clerk of this court, with surety to be approved by him, in the penalty of One Hundred Dollars ($100.00) condi-
43 tioned according to law.

The Petition for Writ of Error and Supersedeas, filed in Open Court September 3rd, 1913, is in the words and figures following, to-wit:—

H. F. Hostetter, Plaintiff Below, Defendant in Error,
v.
The Baltimore and Ohio Railroad Company, a Corporation, Defendant Below, Plaintiff in Error.

Upon an Appeal from the Judgment of a Justice of the Peace.

Petition.

To the Honorable William S. Haymond, Judge of the Circuit Court of Marion County, West Virginia:

Your petitioner, The Baltimore and Ohio Railroad Company, conceives that it is aggrieved by a final order entered by the Intermediate Court of Marion County, on the 15th day of July, 1913, in a certain action therein pending upon an appeal from the Judgment of a Justice of the Peace wherein H. F. Hostetter was plaintiff and your petitioner was defendant; in and by which said order the said Intermediate Court overruled a motion made by your peti-
44 tioner to set aside the verdict found by the jury on the trial of the issue herein joined, and grant your petitioner a new trial, and entered judgment against your petition- and the sureties on its appeal bond for the sum of $59.00, with interest thereon from the 29th day of May, 1913, until paid, and costs. A transcript of the record of the proceedings in said action is herewith exhibited.

Your petitioner would show that the facts out of which this controversy arises are as follows: On and prior to the 6th day of May, 1911, the plaintiff, H. F. Hostetter, resided at Clifton Forge, Virginia; on or about the 12th day of July, 1911, plaintiff moved from Clifton Forge, Virginia, to Fairmont, West Virginia, where he has ever since resided. While plaintiff was still a resident of the State of Virginia one A. L. Wagner instituted a suit against the plaintiff, said Hostetter, for the recovery of $35.00, alleged to be due by note, before L. C. Duncan, a Justice of the Peace of Alleghany County, Virginia. The plaintiff, Hostetter, was duly summoned to appear before said Justice on the 6th day of May, 1911, service being had on said Hostetter's wife, said Hostetter, himself, not being found, etc., (p. 19, 20.)

No defense was made to this action, and on the said 6th day of May the said Justice rendered judgment against the said Hostetter, the plaintiff herein, for $35.00, with interest thereon from the 6th day of May, 1911, until paid, and $1.50 costs. Upon this judgment a writ of fieri facias was issued and placed in the hands of H. R.

Swisher, a constable of said Alleghany County, on the 26th day of June, 1911, but the same was never satisfied.

About the month of October, 1911, said Hostetter began to work for your petitioner, at Fairmont, West Virginia, Petitioner at all times thereafter regularly paid said Hostetter for his services, except for the month of August, 1913, and an alleged balance of $1.89, carried over from the month of June, 1912.

On the 17th day of September, 1912, before H. H. Harlow, a Justice of the Peace, for the City of Staunton, said State of Virginia, the said A. L. Wagner suggested that by reason of the lien of his said fieri facias, which had been issued on said judgment, there was a liability on your petitioner to said Hostetter, the judgment debtor of said Wagner, and caused said railroad company to be summoned as garnishee. (p. 21.)

Afterward, in pursuance of said garnishment proceeding, your petitioner answered its said summons therein, admitting its liability to the said Hostetter in the sum of $48.55. Whereupon, on the 30th day of September, 1912, said H. H. Harlow rendered judgment against your petitioner, as garnishee of said Hostetter, for $38.40, with legal interest thereon from the 6th day of ——, 1911, until paid, together with costs and commissions amounting to $6.00, subject to a credit of $5.00. (p. 22, 23.)

The said Hostetter was a non-resident of Virginia at the time of the institution of said garnishment proceeding and was not summoned to appear therein, or notified of the pendency of the same, for the reason that the statute of Virginia expressly provides that no service of process on or notice to the judgment debtor need be had. Petitioner questioning the constitutionality of said statute, and in order to test the validity of said judgment against it, appealed from the same to the Corporation Court of Staunton, Virginia, a court of record, where said appeal was heard and determined on the 27th day of February, 1913, in the meantime, petitioner caused said Hostetter to be served with notice of the pendency of said appellate proceeding before said Corporation Court, and requested said Hostetter to be in attendance at Staunton on the trial of said case to assist in defending said suit and garnishment proceeding on appeal. (p. 28, 29.) Said Hostetter paid no attention to said notice and on the 27th day of February, 1913, said appeal was decided by said Corporation Court. An affidavit showing the non-residency of the State of Virginia of said Hostetter was filed in said last named court on the trial of said appeal (p. 24). Said Corporation Court fully sustained the judgment rendered against your petitioner as garnishee by said justice, and petitioner subsequently settled said judgment and costs, as it was compelled to do, amounting to the sum of $47.50 (p. 3). After settling said judgment and costs amounting to the sum aforesaid, there remained in your petitioner's hands, according to its calculation, the sum of $.00.

On October the 18th, 1912, said Hostetter entered suit against your petitioner before D. S. Helmick, a Justice of Marion County, West Virginia, for the recovery of $100.00 for wages claimed to be

47 due from petitioner to said Hostetter for the said month of August, 1912, but which petitioner had declined to pay by reason of the pendency of said garnishment proceeding against it in the State of Virginia. As a result of this suit, on November 11, 1912, said Helmick, Justice as aforesaid, rendered judgment against your petitioner and in favor *od* said Hostetter for $55.69, from which said judgment your petitioner appealed to the Circuit Court of Marion County, West Virginia. Said appeal was certified by said Circuit Court to the Intermediate Court of said County, wherein on the 28th day of May, 1913, the defendant tendered and filed a written offer to confess judgment in favor of said Hostetter for the sum of $1.00, (the balance due said Hostetter as aforesaid) which offer was not accepted. Thereupon the defendant entered its plea that "It did not owe plaintiff in the manner and form as the plaintiff had complained against it." Issue was thereon joined and the same was tried by a Jury, which having heard all the evidence in the case, the instructions of the court and the argument of counsel thereon, found and returned a verdict in favor of the plaintiff against your petitioner for the sum of $62.47.

Your petitioner thereupon moved the court to set aside said verdict and to grant it a new trial of this action for the following reasons:

(1) The Court erred in giving to the jury, at the request of the plaintiff and over the objections of the defendant, plaintiff's instructions Nos. 1 to 8 inclusive.

(2) The Court erred in refusing to permit the defendant to introduce in evidence a part of the record of the proceedings of
48 the corporation court of the City of Staunton, Virginia, the same being a part of the opinion of the said Court.

(3) The verdict exceeds the amount demanded in the plaintiff's bill of particulars.

(4) The verdict of the jury is contrary to the law and the evidence.

Of its ruling on said motion the said Intermediate Court took much time to consider.

On the 18th day of June, 1913, and during the same term of court at which said verdict was returned, the plaintiff moved said court to enter a remit-tur of said verdict in the sum of $3.47, of which motion the said Intermediate Court also took time to consider.

At a special term of said court held on the 15th day of July, 1913, the said court having deliberately considered both of the aforesaid motions overruled your petitioner's motion to set aside said verdict and grant it a new trial of this action, and over the objections of your petitioner sustained the said motion of the plaintiff to enter a remit-tur of said verdict in the said sum of $3.47, and the court thereupon entered judgment against your petitioner, and M. M. Neely and J. P. Kirby, its sureties, upon said verdict of the jury, for the amount of the same, less the said sum of $3.47, to-wit, for the sum of $59.00, with interest thereon from the 29th day of May, 1913, the date of said verdict, until paid, and the costs of this suit; to which action of the court in overruling petitioner's motion to set

e said verdict and grant it a new trial, and in sustaining said motion to enter said remit-tur, and in entering judgment against your petitioner and its said sureties, with interest on the amount of the same from said 29th day of May, 1913, your ioner, by its counsel, then and there excepted, and took its two ral bills of exceptions, which were, at a later date, signed, sealed, saved to it, and made a part of the record herein.

our petitioner assigns the following errors in the judgment of said Intermediate Court:

The Court erred in giving to the jury, over the objections of petitioner, instructions Nos. 1 to 8 inclusive, and each of them, d for by the plaintiff, as shown in and by defendant's bill of ptions No. 1.

The Court erred in overruling the motion of your petition- to side the verdict of the jury and grant it a new trial of the issue in, upon the grounds stated and shown in petitioner's bill of ptions No. 2.

The Court erred in various other matters apparent on the face he record.

Therefore your petitioner prays that a writ of error and supersas to the judgment of said Intermediate Court may be awarded nd that said final judgment may be reviewed and reversed.

THE BALTIMORE AND OHIO RAILROAD COMPANY, *By Counsel.*

. M. NEELY,
Counsel for Petitioner.

We, M. M. Neely and J. P. Kirby, attorneys practicing in the Circuit Court of Marion County, West Virginia, do certhat, in our opinion, there is error in the judgment herein comned of, and that the same should be reviewed.

M. M. NEELY.
J. P. KIRBY.

t another day of said Circuit Court, to-wit, on the 23rd day of e, 1914, the following order was entered:

H. F. HOSTETTER
vs.
BALTIMORE & OHIO RAILROAD COMPANY.

Writ of Error.

his day came the plaintiff by Harry Shaw, his attorney, and e also the defendant by H. S. Lively, its attorney, and thereupon case came on to be heard upon the petition of said defendant a writ of error to the judgment of the Intermediate Court mened in said petition; upon the transcript of the record filed with petition; upon the several assignments of error in said petition; the order granting this writ of error and supersedeas and upon argument of counsel.

And this case having been argued and submitted to the court for decision at a former term hereof, and the Court now being advised of its judgment herein, doth consider there is no error in the
51 said judgment of the said Intermediate Court, complained of by said appellant, the Baltimore & Ohio Railroad Company, prejudicial to the said appellant. And it is therefore considered by the Court that the said Judgment of the said Intermediate Court of Marion County, entered in this case on the 15th day of July, 1913, against said Baltimore & Ohio Railroad Company, and M. M. Neely and J. P. Kirby, its sureties on its appeal bond, for the sum of $59.00 with interest thereon from the 29th day of May, 1913, be and the same hereby is affirmed.

And it appearing to the Court that the interes- on said judgment to the 3d day of September, 1913, the day this writ of error took effect, amounted to the sum of $.88; and that the costs incurred herein to that day amounted to the sum of $35.85; and that the aggregate of the judgment, interest and costs to the time said writ of error took effect, as aforesaid, amounted to the sum of $95.73; therefore, as provided by section 28 of chapter 6 of the acts of the Legislature of 1893, the said plaintiff, and appellee, is hereby awarded 6% interest on said last named sum, from the said 3rd day of September, 1913 (as damages, and in lieu of interest) until paid; and it is considered by the court that the plaintiff do recover from the said defendant, and appellant, the Baltimore & Ohio Railroad Company, the said sum of $95.73 with interest thereon from said 3rd day of September, 1913, until paid, together with his costs by him expended in and about his defense of this writ of error in this court.

To the action of the Court in affirming the said judgment
52 of said Intermediate Court and rendering judgment in this Court against the defendant for the sum of Ninety-five and 73/100 Dollars ($95.73), with interest thereon from said 3rd day of September, 1913, until paid, together with the costs of this suit, the said defendant, by counsel, objects and excepts.

And the said defendant desiring to make application to the Supreme Court of Appeals of West Virginia for a writ of error and supersedeas to this judgment, on motion of said defendant, by its counsel, the operation of this judgment is hereby suspended for the period of sixty days from this date to enable the said defendant to have a record made up herein provided, however, the said defendant, or someone for it, shall, within thirty days from this date, execute bond before the Clerk of this Court with good security thereon, in the penalty of $50.00, conditioned according to law.

At another day of said Circuit Court, to-wit, on the 27th day of July, 1914, the following order was entered:

H. F. HOSTETTER
vs.
BALTIMORE AND OHIO RAILROAD COMPANY, a Corporation.

On an Appeal.

day came the said Baltimore and Ohio Railroad Company, ration, by H. S. Lively, its counsel, and tendered its two bills ptions marked for identification "Defendant's Bill of Excep- o. 3," and "Defendant's Bill of Exceptions No. 4," respect- ively, and which said bills of exceptions, and each of them, are, on defendant's motion, hereby ordered filed and made a part of the record in this case.

ndant's Bill of Exceptions No. 3," filed in Open Court, July 4, is in the words and figures following, to-wit:

Defendant's Bill of Exceptions No. 3.

H. F. HOSTETTER
vs.
B. & O. R. R. COMPANY.

On an Appeal.

remembered that upon a hearing of the above entitled action Circuit Court of Marion County, West Virginia, the Court l the following written opinion in handing down the final erein, which opinion is as follows:

"H. F. HOSTETTER, Plaintiff,
vs.
ALTIMORE AND OHIO RAILROAD COMPANY, Defendant.

On Appeal."

action was brought before D. S. Helmick, a Justice of the Marion County, on the 18th day of October, 1912, and the bases his damages at One Hundred Dollars ($100.00) the ame being made up of a Bill of Particulars filed before said ustice, containing two items, one being for the sum of sixty ollars ($60.00), for labor for the month of August, 1912, other being forty dollars ($40.00) for damages. Subse- the plaintiff, in his testimony, at the trial had in the Inter- Court, fixes the amount of his claim, exclusive of interest, he said defendant, in the sum of $58.68, made up of six nd distinct items. A trial was had before the justice and ent was rendered in favor of the plaintiff on Nov. 11, 1912, 9. From this judgment an appeal was taken, which ulti- eached the Intermediate Court of this County, and on the

y of May, 1913, a jury trying said action rendered a verdict
of the plaintiff in the sum of $62.47; and afterwards the
ermediate Court, upon the motion of the plaintiff, reduced
dict to the sum of $59.00 and entered judgment for this last
sum on the 15th day of July, 1913, from which said judg-
appeal was allowed and brought to this Court on the 3rd
Sept., 1913, and now this action comes on to be heard upon
rd going to make up said appeal aforesaid.
grounds of error assigned in the petition filed herein are as

e Court erred in giving to the Jury, over the objections of
itioner, instructions Nos. 1 to 8, inclusive, and each of them,
r by the plaintiff, as shown in and by defendant's Bill of
n No. 1.

2. The Court erred in overruling the motion of your peti-
ioner to set aside the verdict of the jury and grant it a new
rial of the issue herein, upon the ground stated and shown
oner's Bill of Exception No. 2.

e Court erred in various other matters apparent on the face
ecord.

acts, briefly stated, are: That the plaintiff prior to about the
r of July, 1911, resided at Clifton Forge, in the State of Vir-
nd that shortly thereafter he ceased to be a resident of said
d became a resident of Fairmont, Marion County, West Vir-
d that about October, 1911, he began work for the defendant
siding here at Fairmont and that he continued in such em-
t until some time in September, 1912; that while he was a
of said State of Virginia he became indebted to one A. L.
in the sum of of $35.00, upon which he afterwards paid
of $5.00, and that the balance of said debt has never been
paid by him to the said Wagner. It is further shown by the
at on the 1st day of May, 1911, at which time plaintiff was
nt of Virginia, the said Wagner instituted a suit before a
f the said State, in the County of Alleghany, against said
for said debt of $35.00, which action was returnable before
ice on the 6th day of May, 1911, at 10 o'clock A. M.; sum-
owing said action was served on said plaintiff on the said
f May, 1911, by delivering a copy thereof to the wife of the
at his usual place of abode; and it is further shown by said
hat on the said 6th day of May, 1911, judgment was en-
ered by L. C. Duncan, the Justice before whom said action
as pending, against the said plaintiff, for said sum of $35.00,
ith interest from that date and $1.50 costs. Said record
hows that on the 26th day of June, 1911, an execution was
said judgment by said Justice returnable in 60 days there-
at subsequently, on the 17th day of Sept., 1912, a garnishee
was issued by H. H. Harlow, a Justice of the Peace in the
Staunton, Virginia, directed to a Constable of said City,
arnishee summons was directed against the said Baltimore
o Railroad Company, a corporation, charging that it had
r other personal estate, in its possession or control belonging

l Hostetter, and requiring the said railroad company to ap-
e said Justice on the 30th day of September, 1912, at 10
M. to answer said garnishment or suggestion: and that
stion was served on said Railroad Company on the 19th
tember, 1912, and that on the 3rd day of October, 1912,
e last above named rendered a judgment against the said
and the Baltimore and Ohio Railroad Company in favor
l Wagner in the sum of $38.40, with interest from May
until paid, and the costs of said judgment and costs of
nt, the same being, however, subject to a credit of $5.00,
rnishment or Suggestion proceeding, no notice or process
d was given to or served upon the said Hostetter, he then
sident of this State, and had been such resident for more
r previous to the date of the institution of the Garnish-
eeding. From this said last named Judgment the Balti-
e and Ohio Railroad Company appealed to the Corpora-
Court of the City of Staunton, and this appeal was heard
passed upon by said Court on the 27th day of February,
far as the record shows, no notice of such proceeding in
of Virginia was given to the defendant until on or about
y of February, 1913, when the said Railroad Company
in writing, the said Hostetter of the pendency of the said
nt proceedings on appeal in said Corporation Court. Said
however, stated in his examination that when his wages
. 1912, were withheld from him by the said Railroad
hat he was informed by some of Railroad employes that
ad been attached by a man by the name of Mayhan, in
laiming that he knew of no such man and didn't owe
an any debt whatsoever; that he brought this suit for
e of recovering the wages thus withheld from him by
d Company. It is not contended that any formal notice
o said Hostetter of the Garnishment Proceedings for the
the Statute of Virginia under which said proceeding was
oes not require notice to be given a non-resident of that
pendency of the garnishment or suggestion.

earing in the Intermediate Court, the defendant intro-
tified copy of the record of the proceedings before said
Court, including the opinion of the Judge presiding
l Court touching the said action, but excluded from such
following language:

e reasons, it being admitted by the garnishee debtor that
s the sum of $18.55 in its hand belonging to the judg-
debtor to satisfy in full the plaintiff's demand."

is proceeding coming on now to be heard upon the
ding the assignments of error as set forth in the petition
ndant company, the Court with some hesitancy, as well
inclined to, and doth, take the position that, upon the
l and application to the facts therein contained of the
les governing proceedings of this character, there is no
rror of which the said defendant and appellant can

al judgment against Hostetter was obtained, according
l, and notwithstanding his denial, in accordance with
erning legal procedure in Virginia, and shows that he
and legally served with a summons setting forth the
action. What defense, if any, was made by him is not
it is presumed he had no defense to the original action.
was issued on said judgment on the 26th day of June,
e record fails to disclose that said execution was ever
o be enforced or was ever returned. When the sugges-
ings were undertaken, in September, 1912, which were
pon an execution which was issued on August 7, 1912,
tetter was not within the jurisdiction of the Courts of
le then had a contract of employment with the Balti-
hio Railroad Company which was made in West Vir-
and which was carried into effect in this State. He was
dent of West Virginia and presumably he was entitled
s pay for his services rendered said corporation at the
employment.

al rule, although there are some exceptions to it, is that
e of an agreement to the contrary, every person who is
her by the day or upon a salary, is entitled to receive
ation at the place or situs of his employment, and that a
rson or corporation from whom any wages or salary is
ch employee is presumed to know that the payment of
lness is usually where the employment was made or the
rendered, or at the domicile of the creditor. While it is
Baltimore and Ohio Railroad Company is for certain
tizen of the State of Virginia, as well as a citizen of the
t Virginia, yet the accepted rule is that a corporation
nicile in two or more States or localities, cannot be gar-
creditor of an employee in a different forum or locality
herein the employment takes place and where the *ser-*
dered without there has been a notice given to the cred-
absence of such a notice, a proceeding as to the creditor
on is void and has no binding effect upon such creditor.
e Court of this State, in the case of Stewart vs. Northern
mpany, in 45 W. Va., at page 734, lays down the legal

e judgment of a competent Court of any State that has
ver the person or subject matter is conclusive upon the
s of the controversy in every State, a Court of another
has not the power, without service of process or volun-
ppearance, to render a judgment on a contract that is
id under the statutes of the State where it is made."
id case, on page 742 thereof, the said Court ap-roves
he finding of the Supreme Court of Alabama in the
oad Company vs. Nash, reported in 23rd Southwestern
e 825, decided in June, 1898, the syllabus of which
se is as follows:

Courts of one State have no jurisdiction to attach and
debt due to and payable to a non-resident, where he

rvice of process on his debtor as garnishee, in the rsonal service on the creditor within the state of the v-luntary appearance.

ayment by the garnishee of a judgment rendered ainst a non-resident without personal service within ne forum, or voluntary appearance, constitutes no de- sequent suit by the judgment debtor against the gar-

onstitutional provision that "full faith and credit n in each state to the public acts, records and dings of every other state," does not apply to a judg- a non-resident debtor, in the absence of personal im within the state of the forum, or a voluntary ap- e."

e Court w-ll says, on page 741 in the case of Stewart thern Assurance Company, quoted from the case of etchum, 11th Howard U. S. Report, 165:

id not intend by the Act of 1790 to declare that a lered in one state against the person of a citizen of ad been served with process or voluntarily made de- ave such faith and credit in every other state as it urts of the state in which it was rendered."

iew taken of Article IV Section 1, of the Constitution States would be in violation of a well recognized h obtains everywhere in the United States, and which 5th Amendment to U. S. Constitution, that no per- prived of his property without due process of law. ndamental and essential parts of every controversy in ice is that due notice shall be given to every person uch litigation of the character of the proceeding e and object of the same. To my mind, the said rail- was not, and is not, protected by the garnishment d in the State of Virginia, for the reason that said far as they sought to bind said Hostetter, were void e and effect.

xceptions concerning the remitt-ur of $3.47 so as to dict below $60.00 is not well taken. This action is in t, and the items upon which the account is based ly ascertainable as is also the probable amount of included in the verdict. Where the action is of this r, the rule obtains that it is the province and right of t only permit but to direct a remittitur where there r fixing the amount thereof. In the case of Un- more & Ohio Railroad Company, reported in 34 W. and particularly on page 279 quoting from 11th Court says:

e of remitting, when the illegal part is clearly dis- om the rest, and may be ascertained by the Court, ng the functions of the jury and substituting its heirs, is well settled. Thus, when a verdict allows t exceeds the amount claimed, or in any other case

when that
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"Defendan
July 27, 191

THE BALTIM

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which ought not to stand is clearly ascertained, the be allowed."

instructions complained of in view of the position taken by herein above set forth, it is unnecessary to pass judgment instructions. The defendant is not prejudiced by error, error, in said instructions, if the Court is right in its the merits of this controversy.

view of the record, the order now to be entered is an confirmation of the judgment of the intermediate Court and complained of in said petition of said Railroad d a proper order may be prepared in accordance with lative to appeals of this character."

d the defendant, by its counsel, then and there excepted d written opinion and moved the Court to make the a matter of record herein, which is hereby done, and for the same is marked, "Defendant's Bill of Exceptions

special term of said court, this 27th day of July, 1914, irty days from the adjournment of said term of Court action was heard.

WILLIAM S. HAYMOND, [SEAL.]
Judge of the Circuit Court of
Marion County, West Virginia.

t's Bill of Exceptions No. 4," filed in Open Court 4, is in the words and figures following, to-wit:

Defendant's Bill of Exceptions No. 4.

H. F. HOSTETTER
vs.
ORE AND OHIO RAILROAD COMPANY, a Corporation.

On an Appeal.

mbered that upon a hearing of the above entitled action it Court of Marion County, West Virginia, counsel defendant specially set up and claimed on behalf of t that the action of the Intermediate Court of Marion y, West Virginia, in refusing to set aside the verdict of ry rendered in the said Intermediate Court against id defendant and in favor of the said plaintiff, and said defendant a new trial, practically and in effect aid defendant the right given it under Article IV, the Constitution of the United States in that full faith s not given to the proceedings had in the Virginia which said proceedings were introduced in evidence f said cause had in said Intermediate Court and in- transcript of the record presented with petition of the e Baltimore and Ohio Railroad Company, a corpora-

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. And the Court further certifies that in enter-
rming the judgment of said Intermediate Court,
, the final judgment in this case, it considered
rights which said defendant, The Baltimore and
mpany, specially set up and claimed that it had
d Intermediate Court.
efendant thereupon excepted to the action of the
unto it what it conceives to be its rights under
e 1, of the Constitution of the United States, and
the final judgment of which complaint has been
the Court to make said claim of said defendant
r said Article IV, Section 1 of the Constitution
s, a matter of record, which is hereby accordingly
ntification is marked "Defendant's Bill of Ex-

a special term of said Court, this 27th day of
and within thirty days from the adjournment
n of Court at which this action was heard.

WILLIAM S. HAYMOND, [SEAL.]
Judge of the Circuit Court of
Marion County, West Virginia.

IRGINIA,
f Marion, ss:

Clerk of the Circuit Court in and for the County
le aforesaid, hereby certify that the foregoing is
transcript of the record, as taken from the record
in my office, in the case of Harry F. Hostetter
more and Ohio Railroad Company, heard, tried
said Circuit Court.
hand this 14th day of August, 1914.
it Court, Marion County, West Virginia.]

W. S. BLACK,
Clerk Circuit Court Marion County,
West Virginia.

Transcript $19.50.

] Harry F. Hostetter vs. Baltimore & Ohio Rail-
ny. Transcript of Record. Circuit Court, Marion
inia.

At Law.

AND OHIO RAILROAD COMPANY, a Corporation,
laintiff in Error and Appellant,
v.
ETTER, Defendant in Error and Appellee.

The Baltimore and Ohio Railroad Company, a
G. Mathews, its attorney, hereby sets forth that

on or about the
County, State of
judgment herein
the said The Ba
order and judgm
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The Baltimore a
in detail appear
this petition.

That the said
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Supreme Court
Circuit Court of
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& Lively, Lawyer

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THE BALTIMORE

H

The Baltimore
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there is manifest
judgment of the
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That the said
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West Virginia, a
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City of Staunton,
the said judgmen
The Baltimore a
under Article IV,

3rd day of June, 1914, the Circuit Court of Marion West Virginia, made and entered a final order and in favor of the said H. F. Hostetter and against imore and Ohio Railroad Company, in which final ent and the proceedings had prior thereto in this ors were committed to the prejudice of the said d Ohio Railroad Company, all of which will more from an assignment of errors which is filed with

Circuit Court of Marion County, State of West ighest court of the said State of West Virginia, in cision in this suit could be had.

re the said The Baltimore and Ohio Railroad petitions and prays that a writ of error from the the United States may issue in this behalf to the Marion County, State of West Virginia, for the errors of which complaint has been made herein, ript of the record, proceedings and papers in this nticated, may be sent to the Supreme Court of the

THE BALTIMORE AND OHIO RAILROAD COMPANY, *Petitioner*,
By W. G. MATHEWS, *Its Attorney*.

ed:] The Baltimore and Ohio Railroad Company, error and appellant, v. H. F. Hostetter, defendant lee. At Law. Petition for Writ of Error. Neely Fairmont, W. Va.

At Law.

AND OHIO RAILROAD COMPANY, a Corporation, Plaintiff in Error,
v.
F. HOSTETTER, Defendant in Error.

and Ohio Railroad Company, a corporation, sub- n with its petition for a writ of error herein, that rror in the record, proceedings, decision, and final Circuit Court of Marion County, State of West o-wit:

Circuit Court of Marion County, in affirming the Intermediate Court of Marion County, State of l rendering judgment against the said The Balti- Railroad Company, failed to give full faith and cial proceedings of the Corporation Court of the a court of record of the State of Virginia, and by of the said Circuit Court of Marion County, said d Ohio Railroad Company was denied its rights Section I, of the Constitution of the United States.

A transcript of the record of the proceedings had in the Intermediate Court of Marion County, State of West Virginia, and
71 in the Circuit Court of Marion County, State of West Virginia, to which last named court application for a writ of error was made and allowed, and also by which last named court final judgment against the plaintiff in error was rendered, is herewith presented as a part hereof, and said transcript of the record shows, briefly, the following facts:

(In order to be brief, the plaintiff in error, said The Baltimore and Ohio Railroad Company, a corporation, will be hereafter designated simply as the Company and the defendant in error, said H. F. Hostetter, will be designated as Hostetter.)

Hostetter became indebted to one Wagner while both were residents of the State of Virginia. Wagner, in a Justice of the Peace Court of Virginia, while he and Hostetter were both still residents of said State, duly obtained a judgment against Hostetter for $35.00 and costs. Subsequently, Hostetter moved from said State of Virginia to the State of West Virginia and became a resident thereof and an employee of the said Company. Subsequently, garnishment proceedings, in the State of Virginia, were instituted against Hostetter and his employer, the said Company, and a judgment rendered against the said Company by a Justice of the Peace of Virginia, from which judgment an appeal was taken by said Company to the Corporation Court of the City of Staunton, the highest court in
72 the State of Virginia to which the said garnishment proceeding, under Virginia laws, could be appealed. No process as to the garnishment proceedings before the Justice of the Peace was served upon Hostetter. He was a non-resident of the State of Virginia during the pendency thereof. However, about ten days before final judgment was rendered in the appellate court of Virginia, said Company had a written notice of said garnishment proceedings served upon Hostetter, and directed him therein to enter an appearance in and to defend said garnishment proceedings. Hostetter, notwithstanding said notice, made no appearance and judgment was rendered against the garnishee, said Company. This judgment was subsequently paid by said Company, the amount thereof, as shown by the record, being the sum of $47.50.

Hostetter, subsequent to the date of the rendition against said Company of said judgment by a Justice of the Peace of Virginia, and during the time the appellate proceedings above mentioned were pending in the State of Virginia, entered suit against said Company for wages claimed to be due, and judgment was rendered against it and in favor of said Hostetter by a Justice of the Peace of West Virginia. An appeal was taken by the Company from the judgment of said Justice of the Peace to the Circuit Court of Marion County, State of West Virginia, which court certified the case
73 to the Intermediate Court of Marion County, State of West Virginia, as provided by the law of said last named state, for trial, and trial of said cause was had before a jury in said Intermediate Court of Marion County. There was filed in said Intermediate Court and read and submitted to said jury a certified copy of

the proceedings had in the Corporation Court of the City of Staunton, State of Virginia, in which court a judgment was rendered against said Company as the garnishee and employer of said Hostetter as above set forth, and said jury was instructed by said Intermediate Court that full faith and credit should be given to the said proceedings had in the said State of Virginia.

Hostetter claimed at the trial before the jury that said Company owed him the sum of $58.68, as will appear from the record. The Company claimed at said trial to owe Hostetter the sum of One Dollar ($1.00), after deducting the amount paid pursuant to the judgment of the court of Virginia. The jury in said Intermediate Court, wholly ignoring the proceedings had in the court of Virginia whereby said Company was compelled to pay for its employee, Hostetter, the sum of $45.55, as aforesaid, rendered a verdict against said Company and in favor of Hostetter for the sum of $62.47,
74 which verdict was subsequently reduced by order of said Intermediate Court to $59.00. Said Company moved said Intermediate Court to set aside said verdict and grant it a new trial on various grounds, one being that the verdict of the jury was contrary to the law and the evidence. Said Intermediate Court refused to set aside the verdict of the jury and grant said Company a new trial, as will appear from the record, and the Company excepted to the action of said Intermediate Court. A petition for a writ of error and supersedeas to the judgment of said Intermediate Court was presented to and allowed by the Circuit Court of Marion County, State of West Virginia. After the allowance of said writ of error the questions of law arising in this case were argued at length before said Circuit Court and, as will be seen by reference to Bill of Exceptions No. 4 in the record, the Federal question as to full faith and credit being given to the proceedings of the court of Virginia arose directly and was fully set forth and argued on behalf of said Company. Said Circuit Court did not sustain the view taken by said Company and entered a final order and judgment in this matter against it.

The said Company, therefore, believes that by the entering of said final order and judgment against it in said Circuit Court of Marion County it was deprived of its rights under the Con-
75 stitution of the United States, and, as under the laws of the said State of West Virginia no appeal from the judgment of said Circuit Court of Marion County can be taken to a higher court in that State on account of the amount involved therein not being of greater value or amount than the sum of One Hundred Dollars ($100.00), the said Company believes that it has a right to be heard in the Supreme Court of the United States to the end that the said error may be corrected and that the judgment so rendered by said Circuit Court of Marion County, State of West Virginia, may be reversed and declared of no effect.

W. G. MATHEWS,
Attorney for The Baltimore and Ohio Railroad Company, a Corporation.

76 [Endorsed:] The Baltimore and Ohio Railroad Company, a corporation, plaintiff in error, v. H. F. Hostetter, defendant in error. At Law. Assignment of Errors. Neely & Lively, Lawyers, Fairmont, W. Va.

77 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judge of the Circuit Court of Marion County, State of West Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Harry F. Hostetter, Plaintiff, and The Baltimore and Ohio Railroad Company, Defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was claimed under the
78 Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said Defendant, The Baltimore and Ohio Railroad Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 21st day of August, in the year of our Lord one thousand nine hundred and fourteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by
EDWARD D. WHITE.
Chief Justice of the United States.

[Endorsed:] Supreme Court of the United States. October term, 1—. —— —— vs. —— ——. Writ of error.

UNITED STATES OF AMERICA, *ss:*

Harry F. Hostetter, Greeting:

You are hereby cited and admonished to be and appear at a Su-reme Court of the United States, at Washington, within thirty days om the date hereof, pursuant to a writ of error, filed in the Clerk's lice of the Circuit Court of Marion County, State of West Vir-nia wherein The Baltimore and Ohio Railroad Company is plaintiff error and you are defendant in error, to show cause, if any there why the judgment rendered against the said plaintiff in error as the said writ of error mentioned, should not be corrected, and why edy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the ited States, this 21st day of August, in the year of our Lord one ousand nine hundred and fourteen.

EDWARD D. WHITE,
Chief Justice of the United States.

On this 29th day of August, in the year of our Lord one thousand nine hundred and Fourteen, personally appeared F. Buckley before me, the subscriber, B. S. Wilson, a Notary Public of rion County, W. Va., and makes oath that he delivered a true y of the within citation to Harry F. Hostetter.

F. V. BUCKLEY.

Sworn to and subscribed the 29th day of August, A. D. 1914. My mmission expires Dec. 13th 1919.

[Seal B. S. Wilson, Notary Public, Marion County, West Vir-ia.]

B. S. WILSON,
Notary Public.

Copy.

Know all Men by these Presents, That we, American Surety Com-y of New York, a corporation, as principal, and W. G. Matthews, surety are held and firmly bound unto Harry F. Hostletter in the l and just sum of Five hundred — no — dollars, to be paid the said Harry F. Hostletter, his certain attorney, executors, ministrtators, or assigns: to which payment, well and truly to be le, we bind ourselves, our heirs, executors, and administrators, tly and severally, by these presents. Sealed with our seals and ed this 21st day of August, in the year of our Lord one thousand e hundred and fourteen.

Whereas, lately *at* an action of law was pending in the Circuit rt of Marion County, West Virginia, between said Harry F. Hos-ter, as plaintiff and The Baltimore and Ohio Railroad Company, orporation, *was* defendant and judgment was rendered against

e said The Baltimore and Ohio Railroad Company on the twenty-rd day of June 1914 and the said defendant having obtained a it of error and filed a copy thereof in the Clerk's Office of the said urt to reverse the judgment in the aforesaid suit, and a citation ected to the said Harry F. Hostletter citing and admonishing him be and appear at a Supreme Court of the United States, at Wash-gton, within - - days from the date thereof.

Now the condition of the above obligation, is such, That if the l Baltimore and Ohio Railroad Company shall prosecute to effect, l answer all damages and costs if it fail to make — plea good, then above obligation to be void; else to remain in full force and virtue.

AMERICAN SURETY COMPANY,
OF NEW YORK. [SEAL.]
By A. E. SCHERR,
Resident Vice President. [SEAL.]
W. G. MATTHEWS, *Surety.* [SEAL.]

Sealed and delivered in the presence of—

——— ———.
——— ———.
——— ———.

Approved by

EDWARD D. WHITE,
Chief Justice of the United States.

STATE OF WEST VIRGINIA,
County of Marion, ss:

I, W. S. Black, Clerk of the Circuit Court in and for the County Marion and State of West Virginia, hereby certify that the within a true and correct copy of an original bond, on file and recorded my office, given in the case of Harry F. Hostetter against The Bal-more and Ohio Railroad Company, a corporation, on an appeal m said case from a judgment rendered by said Circuit Court to Supreme Court of the United States.

Given under my hand and the seal of said Circuit Court, this 1st of September, 1914, and 52nd year of said State.

[Seal Circuit Court, Marion County, West Virginia.]

W. S. BLACK,
Clerk of Circuit Court,
Marion County, W. Va.

Endorsed on cover: File No. 24,365. West Virginia Circuit rt of Marion Co. Term No. 245. The Baltimore and Ohio lroad Company, plaintiff in error, vs. Harry F. Hostetter. Filed tember 12, 1914. File No. 24,365.

FILED
JAN 25 1916
JAMES D. MAHE

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1915.

No. 245

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Plaintiff in Error.

vs.

HARRY F. HOSTETTER,

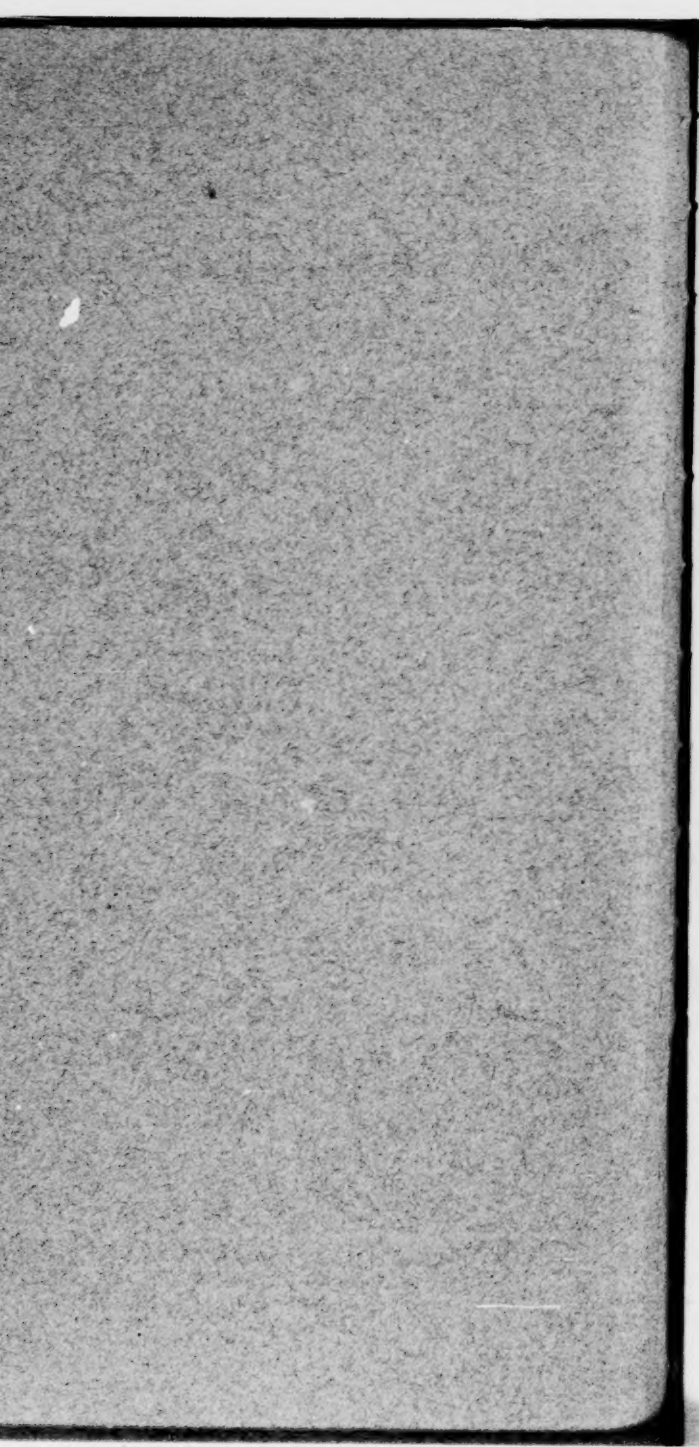
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR, THE BALTIMORE AND OHIO RAILROAD COMPANY.

GEORGE E. HAMILTON,
FRANCIS R. CROSS,
A. HUNTER BOYD, JR.,

Counsel for The Baltimore and Ohio Railroad Company, Plaintiff in Error.

J. H. FURST COMPANY, PRINTERS AND PUBLISHERS, BALTIMORE.



IN THE

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THE BALTIMORE AND OHIO RAILROAD COMPANY,

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vs.

HARRY F. HOSTETTER,

Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR, THE BALTIMORE AND OHIO RAILROAD COMPANY.

STATEMENT.

While Hostetter, defendant in error, was a resident f Virginia he became indebted to A. L. Wagner, who stituted suit before a Justice of the Peace of Alleghany ounty, Virginia, on May 1, 1911, on which date notice of is action was given Hostetter by delivering a copy of e summons to his wife at his usual place of abode. Record, page 10.) No defense was made and judgment

d for $36.50 on May 6, 1911. Shortly after
ter moved to Fairmont, West Virginia, where
1911, he entered the employ of the Baltimore
Railroad Company. Wagner obtained a gar-
mons against the Baltimore and Ohio Railroad
rom a Justice of the Peace of Staunton, Vir-
is judgment against Hostetter on September
taching wages due him for the month of Aug-
(Record, pages 29-30.)

e of this garnishment proceeding was given
s the Virginia statute provides that no service
on, or notice to the judgment debtor is neces-
ch a proceeding. (Record, page 30.)

imore and Ohio Railroad Company admitted a
Hostetter of $48.55, and the Justice entered
n favor of Wagner for $38.40 on September 30,
cord, page 30.) In order to enable Hostetter
e opportunity to enter any defense available
Baltimore and Ohio Railroad Company ap-
n this judgment to the Corporation Court of
Virginia, the highest court in Virginia to
ishment proceedings could be appealed. (Rec-
36.)

uary 14, 1913, a written notice from the Bal-
Ohio Railroad Company was delivered to Hos-
erson in Marion County, West Virginia, inform-
the proceedings pending in the Corporation
aunton, Virginia, and requesting him to assist
ng this action. (Record, pages 15 and 16.)
ng this notice, Hostetter failed to appear, and
later on February 27, 1913, the Corporation
d the appeal and affirmed the judgment of the
Court in favor of Wagner for $47.50 which
s paid over by the Baltimore and Ohio Rail-

d Company to the Clerk of the Corporation Court of unton, Virginia, in March, 1913. (Record, page 17.)
On October 18, 1912, Hostetter entered suit against the ltimore and Ohio Railroad Company before a Justice he Peace of Marion County, West Virginia, for wages to the alleged amount of $100.00. Judgment was en by the Justice in favor of Hostetter for $55.69. ecord, page 2.)
he Baltimore and Ohio Railroad Company took an eal to the Intermediate Court of Marion County, West ginia, where a certified copy of the record of the ceedings in the Corporation Court of Staunton, Vira, showing satisfaction by the Baltimore and Ohio lroad Company of a judgment entered against it in garnishment proceedings instituted by Wagner on his gment against Hostetter was offered in evidence, but excluded and a verdict was rendered for $62.47 in r of Hostetter (Record, page 5), which the court in ng judgment reduced to $59.00. (Record, page 6.)
he Baltimore and Ohio Railroad Company on a writ rror appealed to the Circuit Court of West Virginia, ion County, which on June 23, 1914, affirmed the judgt of the Intermediate Court of Marion County, West ginia, on the ground that the payment by the garee of the judgment rendered for a debt against a nonlent without personal service within the State of the n or voluntary appearance, constitutes no defense to bsequent suit by the judgment debtor against the ishee. (Record, page 28 to 33.)
no appeal to any higher court in West Virginia possible, because the amount involved was less than undred dollars, a writ of error was granted to the reme Court of the United States on August 21, 1914.

ASSIGNMENT OF ERROR

Court of Marion County, West Virginia, he judgment of the Intermediate Court of nd in rendering judgment against The Bal- hio Railroad Company failed to give full lit to the judicial proceedings of the Cor- t of the City of Staunton, a court of record of Virginia; and by the said judgment of it Court of Marion County said The Balti- o Railroad Company was denied its rights 4, Section 1, of the Constitution of the .

ARGUMENT

editor of the garnishee's creditor has ob- ment against the garnishee debtor in ac- the laws of the place where the garnishee rsonally served, then the garnishee debtor is judgment as a defense to a suit by his n another jurisdiction, provided he was not iving his own creditor notice of the attach- ng, so that he might have had the opportun- imself.

he Court has considered and endorsed this number of cases which have come before substantially the same state of facts.

Chicago, Rock Island & Pacific Rail- Sturm, 174 U. S. 710.
s *vs.* Balk, 198 U. S. 215.
ville & Nashville Railroad *vs.* Deer, S. 176.

l be seen from these cases that two requirements
satisfied before the garnishee debtor may plead
ense to a suit against him by his creditor a judg-
tained against him in another jurisdiction by a
of his creditor.

The judgment in the attachment suit must have
tained in accordance with the law of the state
was instituted.

ttachment proceedings were instituted in Vir-
ere section 3609 of the Virginia Code expressly
that no service of process on or notice to a non-
judgment debtor is necessary in such a proceed-
ecord, page 30.)

dgment against the Baltimore and Ohio Railroad
in the attachment proceeding by the Corpora-
rt of Staunton, Virginia, the highest court in
having jurisdiction, was obtained, therefore, in
ce with the law of the state where it was insti-
rvice having been had on The Baltimore and
road Company within the State of Virginia.

. The garnishee debtor must have notified his
of the pending attachment proceeding so that
tor might have had the opportunity to defend

t material at what time of the attachment pro-
otice is given to the garnishee's creditor so that
ave the opportunity to defend himself against
of the person suing out the attachment, but he
had a sufficient opportunity at some time to

was served on Hostetter in person by the Bal-
d Ohio Railroad Company on February 14,
esting him to come to Staunton, Virginia, im-

ist in the defense of the attachment pro-
rd, pages 15, 16.) As the appeal was not
ruary 27, 1913, Hostetter had thirteen
defend the claim made against him in the
but he failed to suggest that he had any
available. (Record, page 12.)
from this that The Baltimore and Ohio
as garnishee by giving sufficient notice
the attachment proceedings, and should
of the use of the judgment rendered
ginia as a defense to its creditor's suit
, because of his neglect to advance any
he thirteen days which elapsed between
which he received from The Baltimore
ad Company and the final judgment on
e Corporation Court of Staunton, Vir-
f his attaching creditor.
nvolved in this case is comparatively
the principle is an extremely impor-
laintiff in error. It is a well-known fact
npanies, such as the plaintiff in error,
ads in many states, are constantly
rts as garnishees in wage attachments.
n such a proceeding cannot rely on the
highest court having jurisdiction in the
attachment is laid as a complete bar to
state by its employe to recover the same
as been heretofore required to pay over
creditor in the first state, then the rail-
acted entirely in good faith and per-
ations imposed on it by law, is required
vice and has no protection under the full
clause of the Constitution of the United

States. A
226:

"It
preve
Thus,
under
he cer
a sec
plead
ment.

was said in Harris *vs.* Balk (*supra*) at page

ought to be and it is *the object of courts to* t the payment of any debt twice over. If Harris, owing a debt to Balk, paid it a valid judgment against him, to Epstein, ainly ought not to be compelled to pay it nd time, but should have the right to his payment under the Maryland judg-

GEORGE E. HAMILTON,
FRANCIS R. CROSS,
A. HUNTER BOYD, Jr.,

Counsel for The Baltimore and Ohio Railroad Company, Plaintiff in Error.

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JAMES D. MAHER
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 245

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Defendant Below, Plaintiff in Error,

vs.

HARRY F. HOSTETTER,
Plaintiff Below, Defendant in Error.

BRIEF FOR HARRY F. HOSTETTER, Defendant in Error.

W. H. CONAWAY,
HARRY SHAW,
Attorneys for Defendant in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 245.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Defendant Below, Plaintiff in Error.

vs.

HARRY F. HOSTETTER,
Plaintiff Below, Defendant in Error.

Brief for Harry F. Hostetter, Defendant in Error.

HARRY SHAW, Attorney for Defendant in Error.

STATEMENT.

The statement of the case in brief on behalf of the Railroad Company is substantially correct; except we call attention to error on page three thereof where it is stated that the "record of the proceedings of the Corporation Court of Staunton * * * was offered in evidence, but was excluded," etc.

'record" was not excluded, but admitted in
nce over the objections of the plaintiff. The
dant company even prevailed on the trial court
roduce to the jury as evidence, the opinion of
udge of said Corporation Court of Virginia,
he objections of the plaintiff. (Record, pp. 14
5). The court also gave the jury three instruc-
at the instance of the defendant (being Nos.
nd 5, record, p. 21), telling the jury to consider
ecord.

ARGUMENT.

defendant relies solely upon an alleged record
Corporation Court for defense to this action.
that record the plaintiff says, that it is not a
l of a valid judgment, for the following rea-

That the said paper does not show any judg-
ever having been rendered by any justice of
ace against the plaintiff Hostetter, in the orig-
tion.

That it does not show, or purport to show,
here even was ever any trial by or before the
d justice, L. C. Duncan; or that said justice
eard any proof, or that the plaintiff Wagner
ppeared before him, or was sworn or even filed
rt of account.

That it does not show that any writ of **fieri**
was ever issued on said alleged judgment.
ention is called to the paper-writing purport-
be a record of the matters mentioned in para-
s (1), (2) and (3) above, observation of which
isclose that the same is a mere recital by the

corporation court of what was done (or may have been done) before the justice; but this recital of the corporation court is no evidence that there was any valid judgment, rendered upon a trial after service of process, by said justice. The action involving the defendant Company is a garnishee proceeding and before any such proceeding can be instituted, there must first be a valid judgment against the principal defendant. There is no such evidence in the record. What court, but the justice himself, can certify to a judgment upon his docket? Will any one contend that the corporation court can certify to a judgment rendered by a justice? And that the transcript of a judgment of a justice (which is the only way to prove such a judgment) can be dispensed with by filing a certificate of the corporation court to that effect?

The plaintiff contends that before the defendant Company can have any standing upon its alleged garnishment at all, as a defense to plaintiff's claim, it must first show by proper and legal evidence that there was a valid judgment against the plaintiff before the justice in the original proceeding, and that execution issued upon that judgment, and that after said execution was issued and while it was alive, the said garnishment proceeding was served upon the defendant Company.

There is no certified transcript of any judgment before the justice in the original suit, and therefore no proof of any judgment.

There is no certified copy of any summons beginning such suit, and showing service thereof upon the said Hostetter.

There is no certified copy of any writ of **fieri facias** issued upon any such judgment.

It is true there is copied into said record what ap-

be (record, p. 10) a summons, a return of and an execution; but no one certifies that e what they purport to be. The justice is the rson who could so certify; they are mere re- nd have no standing as proof.

f the foregonig apply to the "record" evi- ffered by the defendant Company which per- the original action. Now, in addition to this, e the testimony of the plaintiff (record, pp.), in answer to questions propounded to him ndant's attorney, and in which he made him witness, saying that he did owe A. L. Wag- .; that he was summoned before Justice Harris, of Clifton Forge, Va.; that the sum- as served upon him three days after it was ble; that he went with his attorney before stice, and that the justice dismissed the pro- ; that he never heard any more from said at he never received any other summons, and at was the only suit he had ever had any no- that Wagner had ever brought against him, never heard of any other suit being brought him by said Wagner; and being inquired of by defendant's attorney, plaintiff said that the said H. R. Swisher, the constable men- as having served him with summons in said suit before said Justice L. C. Duncan; that id Swisher never served him with any such ns; and that he never was served with sum- any suit before said Duncan, Justice; that r had any knowledge of any kind of any suit ment before said Duncan, Justice.

tiff being further inquired of by the attorney defendant, said the first he ever knew of any dgment, or of said garnishee proceedings be- id other justice named "H. H. Harlow" was rial of this case before Justice Helmick, when

orney for the Defendant, J. P. Kirby, produced ore the squire what purported to be some "orig- l papers" in such a case before said alleged Jus- Harlow.

Now, the plaintiff contends that this evidence of plaintiff, brought out by the defendant, and not red by the plaintiff, was evidence against the de- dant's alleged garnishment proceeding, and that court did right in refusing to strike the same upon the motion of the defendant, after it intro- ed the alleged record (record, p. 16). It is fur- suggested to the Court that the record of a jus- is not a verity, and the same may be contradict- by other proof, and by the same character of of elicited from the plaintiff by the attorney for defendant.

nd it is earnestly insisted, that the testimony of plaintiff as to said matters, is far better proof, the said recitals by the corporation court, made aid "record" of what took place in the justice's t.

) Referring again to said "record," it does not v that the alleged constable "H. R. Swisher" was ly elected and qualified constable. It might be ended that his return, if properly shown, is a ty and cannot be contradicted; but this would apply in this case, for the reason that there is ing in the record to show that "H. R. Swisher" a duly authorized constable; and nothing show- that he made any service, or return. It is in- d again that the mere **copying** a purported re- of service into the record by the corporation t, does not prove that the said constable ever said summons or that he ever served the same.

) There is no execution shown in said "record" which said garnishment proceeding could have

zed. An execution is copied on page 10 . C. Duncan, June 26, 1911, returnable y days," while the garnishment proceed- as not issued until (p. 11) "17th day of 1912;" and it is clear it could not have upon that execution, because of the lapse een months.

othing in the "record" showing any re- first execution, purporting to have been stice Duncan.

n the "record" it seems there are two lgments. The first (p. 10) is for $35.00 from May 6, 1911, and $1.50 costs. The summons" (p. 11) recites that a writ ias was issued by Justice "Byrd" for interest from May 6, 1911, and $2.00 1.90 commissions. Who rendered this nt? The "garnishee summons" does not s not the same judgment mentioned as "Duncan." The judgment rendered by $35.00 with interest from May 6 1911. ns on garnishment issued by Justice ws that judgment is for $38.40, with in- the same day. The cost in the former ile in the latter it is $2.60 and $1.90, or re is there any pretence at proof of this hich "H. H. Harlow's" (p. 11) pretended ummons recites was issued by "Geo. T. ? or as the paper recites, "sue out Geo. ."?—(whatever that means)?

therefore, no evidence (not even any he "record" by way of recital) showing nt, or any execution upon any judgment, said "garnishee summons" could have by said "H. H. Harlow J. P." against the mpany.

ıe "garnishee summons" issued by said Harlow served upon the defendant Company, by serving gent at Staunton· "where the said B. & O. R. R. les," as he says, in his return, and says he did execute or serve it upon Mr. Hostetter, but is ·med that he is a non-resident of Virginia.

ɔon this service (according to the purported rd, although it is only copied by way of recital) ustice proceeded to render a personal judgment ɔrd, p. 12) against said H. F. Hostetter and B. R. R. Co. for the sum of $38.40 with interest in) from the 6th day of May, 1911, $2.60 cost of udgment, $1.90 commissions, and $1.50 cost of ishment. There is nothing said about any trial, he justice certifies that judgment was rendered, ubject to a credit of $5.00.

) The Court's attention is called to . 11, where-e corporation court recites:

nd at another day, to-wit, On **October 3rd, 1912,** I. Harlow J. P. rendered the following judg-:"

en,

ad the purported judgment where the "J. P." that he rendered the judgment "on the **30th day ptember, 1912.**"

w, we would be in utter darkness as to what place before said Justice Harlow on the hear-f any was had, before him upon the suggestion eeding, but for the kindness of the "corporation ," which comes to our assistance again by way ·itals and tells us (p. 12), how all the proceed-came about; that Duncan gave judgment· etc.; Harlow instituted granishment proceedings, and ıe "heard" the case, and gave judgment against B. & O., and now for the first time we

son why he gave judgment against — the corporation court says, the judg- ven "on its" (the B. & O.) "answer ac- an indebtedness to said Hostetter in 18.55." And then, "from this judgment appealed." — And the judgment of the rmed with costs.— And an affidavit was Hostetter was a non-resident. AND, ten opinion is added to the pretence of a l the things done before the justice, ss application here than the ten com- And the defendant Company actually n the trial court to let it introduce and ury the said opinion of the corporation dence in this action. And it is freely the plaintiff, that the said "opinion" had ication, and was as much legal evidence part of said "record." Why none of the pretends to be copies from the orders aid corporation court. It no where is any part of the recitals are orders en- rd in said court. Attention is called to g of the "record," p. 9; and also to the here the corporation court begins and ital of its affirmance of the justice's ainst the B. & O.; and no where is it e record is a copy of the orders or judg- court.

stetter not a party to the "record."

requisite" (in proving former recovery) court pronouncing the judgment or de- ve jurisdiction of the parties and the er.

a. & W. Va. 272 and cases cited.

e, the justice in Virginia did not have ither of the plaintiff Hostetter or of the

atter, or even of the defendant Compnay, its answer and waiver. Hostetter had been of West Virginia since July 12, 1911; from , he was working for the B. & O. at Fair- d the garnishee summons was not issued . 17, 1912. The Company owed him for endered in West Virginia. Both he and any were residents of West Virginia. How justice get service upon either in Virginia, r the voluntary answer of the Company as stated by the corporatoin court in its

stetter was a resident of West Virginia, h had some rights which a justice of the Virginia could not take from him. The he garnishee proceedings before said jus- o deprive Hostetter of his property with- rocess of law, and without his knowledge . Suppose Hostetter in order to protect , or suppose his wife, in case he failed to red to have the benefit of the exemption ed him by the constitution of West Vir- or she, as the case might be, is entitled nt of this state to hold $200 exempt from or other process. He works for a West orporation, and it owes him here in this it be said that his creditor can go over ia or some other state where the railroad oes business and there attach his wages und that he is a non-resident, and thus oney without process, and deprive him of under the laws and constitution of West What should the company have done s served with suggestion? It should have t had no property or effects of the said in the State of Virginia, subject to the of the courts of Virginia. But it an- t it had money subject to the order of said

t had not, in fact and in law), and
nent was likely given upon its said
t this is what the corporation court
gave his judgment on); and then
ense in the company appealing the
swering that it had in its possession
rty of Hostetter subject to the order
ow could it expect anything but af-
justice's judgment? But after being
irginia, it took its appeal from the
ia, but made no different answer on
admitted liability, and apparently,
mality of a trial, the judgment of
affirmed."

nt Against Company Void.

e return of service of process of the
e Railroad Company, the Court will
urn is invalid. The return states
was had "where the office of the said
mpany is located and where the said
sides," and does not show that it was
resides on whom he served the pro-

Virginia Code 1887, which pertains
cess before justices in these kind of
this provision: "Service under this
in the county or corporation in
s; and the return shall show this,
om and when the service was; other-
shall not be valid."

Authorities.

now in the return of service that it
ty where the agent resides renders
id, and in such case the court obtains

tion of the res, for want of service on the

Va. 451—Penn &c. vs. Rogers.

nishee cannot accept or waive service.
me case, 52 W. Va. p. 466.

y appearance by garnishee does not con-
tion,
ase, p. 467, and especially p. 300.

e cannot give jurisdiction by voluntary
, when not previously served with the
ttachment, **nor where an attempted ser-**
lid.
Va. 450.

efendant is a non-resident and cannot be
sdiction of the fund attached cannot be
service of process on the garnishee in
c.
Rohr 82 Va. 259, Va. Code §2979.

ent proceedings construed strictly, and
aid from the volunteered acts of the gar-
ch acts will be regarded as void, so far
rfere with the rights of third parties."
. Chrisman, 76 Va. 691.

Where a justice is without jurisdiction in
l action, his judgment, as well as that
achment and garnishment, is void. And
t of the money, due from the garnishee
ndant on the order of the justice, is no
the garnishee."
v. Hickory C. C. Co., 58 W. Va. 276.

r place to attach by garnishment is at

the place(and state) of the residence of the debtor.
Idem., 58 W. Va. 388.
See Sams on Attachment, page 207.
See Roller vs. Murray, 71 W. Va. 161.

"A domestic corporation cannot be granished in another jurisdiction by service upon an agent for debts owing by it to a home creditor, over whose person jurisdiction is not acquired."
Douglas vs. Phoenix Ins. Co., 138 N. Y. 209; 33 N. E. 938.

"One can be garnished only in the state where the debt is payable, if that be the place of residence of his creditor."
Bullard v. Chaffee 61 Neb. 83; 51 L. R. A. 715.

"The situs of a debtor's earnings for the purpose of determining his rights to exemption from garnishment is in the state of his residence, where they are payable."
This is a case in point. Balk v. Harris 30 S. E. 318, and also reported in 45 L. R. A. 257.

"Exemption of wages by the law of the state in which is the residence of both debtor and creditor and the place where the wages are payable cannot be defeated by garnishment pending in another state, although the debtor is a railroad corporation which has a residence also in such other state."
Ill. C. R. Co. v. Smith (Miss. case), 19 L. R. A. 577.

"A judgment in garnishment obtained in another state to defeat the exemption laws of the state in which the debtor resides is not valid in the state of his residence."
Singer Mfg. Co. v. Fleming (Neb.) 23 L. R. A. 210.

"Garnishment proceedings must be instituted in the state where the debt is payable or the property is to be delivered and a garnishment in one state of a debt due and payable in another is void."

American, etc., vs. Ins. Co. (Neb.) 40 Am. Repts. 522.

"A court has no power to render a judgment condemning a debt, in a garnishment proceeding, where the situs of the debt is not within the jurisdiction of the Court."

Georgia case, Georgia Ry. v. Brinson 77 Am. Rep. 382.

"Property outside the state is not the subject of garnishment." Before being valid, the garnishee "at the time of the service of process, should have it in his possession and **within the state.**"

Ohio case, Buckeye, etc., v. Fee, 78 Am. Rep. 743.

"The garnishment of a debt due a non-resident without personal service within the state of suit on the defendant or owner of the debt, or his voluntary appearance, is without due process of law. The question is not one of jurisdiction over the garnishee, but one of jurisdiction over property situated without the state, and through the seizure of such property, over the owner thereof.

Louisville R. R. Co. v. Nash (Ala.) 72 Am. Rep. 181.

"The Court must have jurisdiction over the thing garnished, and where the garnishee is a non-resident, has in his hands no property belonging to the principal debtor, and owes him nothing payable within the state, the jurisdiction is defeated."

Balk v. Harris (N. C.), 70 Am. Rep. 606.

12) The answer of the defendant amounted to
lse answer. The Railroad Company did not have
of the effects of Hostetter in the State of Vir-
ia. It did have in West Virginia. His wages
e to be paid to him at Fairmont, West Virginia;
contract of employment was there; his work was
formed there. The theory on which judgment
s rendered and jurisdiction was taken by the jus-
was that the company "resided in Virginia,"
ich is not correct. West Virginia Supreme Court
held that it is a West Virginia corporation.

) **Hostetter's Property Taken in Virginia Without Due Process of Law.**

The attachment proceedings (if such is shown by
record offered in evidence at the trial, which is
ied), was wthout jurisdiction in the justice's
rt where instituted, and if without jurisdiction
re, the Corporation Court to which it was ap-
led was likewise without jurisdiction. The said
rginia Court had neither jurisdiction of the per-
(Hostetter), nor the **rem** (his wages). Both
re in West Virginia.

The judgment upon the attachment in Virginia
s without jurisdiction, and an attempt to take
intiff's property without due process of law, be-
se there can be no jurisdiction without notice
l an opportunity to be heard, and such judgments
l be treated as a nullity everywhere.

"The judgment of a state court rendered with-
ut process upon the defendant, when it is at-
empted to be enforced within the courts of an-
ther state must be deemed to be the act of the
tate within which it was rendered, and as such
t is altogether void and wanting in due process
f law."

Old Wayne M. L. Assn. v. McDonough, 204 U. S. 8, 23.
Other cases cited 5 Enc. U. S. Repts. 641.

We contend that even if the property of Hostetter had been in Virginia, before the court could have taken it from his employer, and given it to his creditor, notice of some kind, either actual or constructive, personal or by publication, would first have to be given him; the provision of the Virginia code to the contrary notwithstanding.

"The seizure of the property in an in-rem proceeding places it within the jurisdiction of the court, but due process of law requires that its owner shall have an opportunity to be heard upon the claim to which it is sought to be subjected. To that end, some notification of the proceedings, beyond that arising from the seizure, prescribing the time within which appearance must be made is essential."
Winsor v. McVeigh, 93 U. S. 274, 279.
Freeman v. Alderson, 119 U. S. 185, 188.

The notice served upon Hostetter printed on page 15 of the record, after the judgment had been entered by the justice, and after the case had been appealed to the Corporation Court, and but 13 days before the decision of that Court, is not such notice as required by law. The notice must eminate from the Court in some official way, prescribing a "time within which appearance must be made."

The judgment of the Corporaton Court seems to have been entered February 27 (record, p 12); and an affidavit of non-residence filed on February 28 (record, p. 13). In this connection, we again call the attention of the Court to the heading of the purported certificate of the record of the judgment in the

orporation Court. "And now at this day, to-wit: the Corporaton Court of Staunton, held at the ourt House thereof, on February 27, 1913." This rtificate lacks an averment that any order or judgent was entered.

(14 The Virginia Court was without jurisdiction garnishee the wages of the plaintiff in the hands of e defendant Ralroad Company.

"To enable the judgment creditor to arrest the payment of what is due the judgment debtor, which might be paid so as to defeat the rights of the creditor, he must go to the domicil of his debtor, and can only do it under the laws and proceedure in force there."

Chicago R. Co. v. Sturm, 174 U. S. 710, 715.
Blackstone v. Miller, 188 U. S. 189, 205.

The defendant asks that the said writ of error be missed, and the judgment of the Intermediate d Circuit Courts be affirmed.

Respectfully,

WAITMAN H. CONAWAY,
HARRY SHAW,

torneys for Plaintiff Below, Defendant in Error.